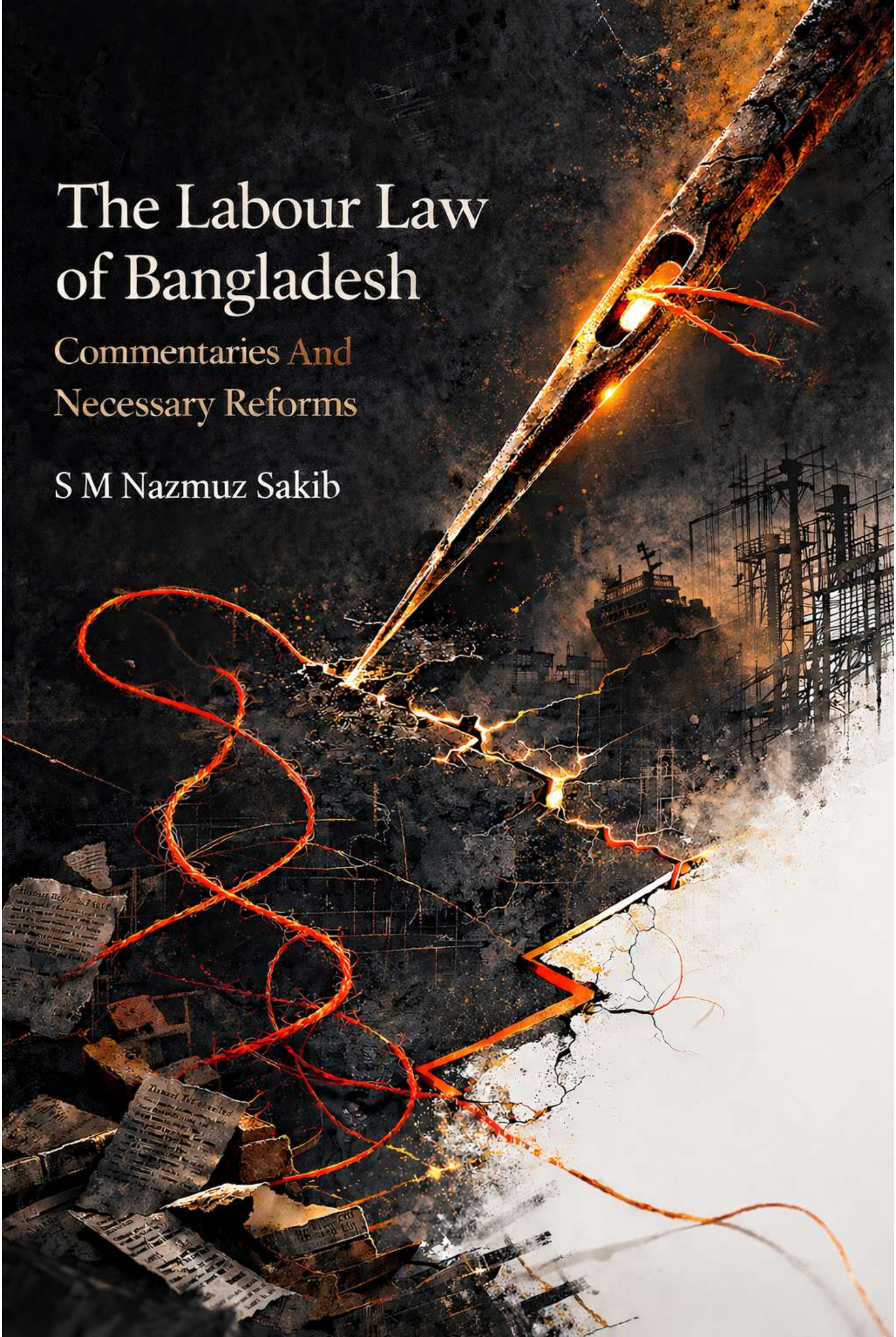
The Labour Law
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Commentaries And
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S M Nazmuz Sakib

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**The Labour Law of Bangladesh: Commentaries And Necessary Reforms**

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# The Labour Law of Bangladesh: Commentaries And Necessary Reforms

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## EDITORIAL PREFACE

This textbook is structured across sixteen parts, each forming a standalone yet interconnected inquiry into the labour law of Bangladesh. It is written as an engaged, critical, and philosophically grounded examination of the legal architecture that governs the lives of over ninety million working people in one of the most densely populated and economically consequential nations of the developing world. It draws upon continental legal philosophy, Anglo-American jurisprudence, international labour standards, postcolonial theory, and the lived experiences of workers in the garment factories, brick kilns, tea gardens, and domestic spaces of Bangladesh.

The work is not a mere statutory commentary. It is an attempt to understand why Bangladesh's labour law looks the way it does, what interests it has served, whose voices it has silenced, and what a genuinely rights-based, philosophically coherent, and contextually sensitive reform framework might look like. The text takes seriously the arguments of Marxist legal theorists, Rawlsian liberals, republican philosophers, feminist jurists, and postcolonial scholars. It treats workers not as abstract legal subjects but as human beings embedded in particular histories, power relations, and social formations.

The sixteen parts of this work collectively constitute an encyclopedic treatment of the subject. The present volume, Part One, establishes the philosophical, historical, and jurisprudential foundations upon which all subsequent analyses will rest.

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## PART ONE: FOUNDATIONS, PHILOSOPHY, AND HISTORICAL GENESIS OF LABOUR LAW IN BANGLADESH

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### CHAPTER ONE: THE NATURE AND PURPOSE OF LABOUR LAW AS A JURISPRUDENTIAL CATEGORY

#### 1.1 Defining the Field: Labour Law as a Distinct Domain of Legal Regulation

Labour law is not simply a branch of law that deals with employment contracts and wage disputes. It is, at its deepest level, a response to a fundamental problem of political economy: the problem of how a society organizes the conditions under which human beings expend their labour power in exchange for the means of subsistence, and how law is deployed to legitimate, regulate, constrain, or transform that exchange. This is a problem of power. It is a problem of history. It is a problem of philosophy. And in Bangladesh, it is a problem of urgent practical consequence.

To begin with the most elementary observation: labour law occupies a peculiar and somewhat paradoxical position in the legal order. On one hand, it borrows from the conceptual vocabulary of private law, particularly contract law, and treats the employment relationship as a voluntary agreement between two legal persons of formally equal standing. On the other hand, labour law explicitly acknowledges that the parties to this agreement are not equal in any meaningful social or economic sense, and it seeks to impose collective and public law constraints upon what would otherwise be an unequal private bargain. This tension between formal legal equality and substantive social inequality is the defining jurisprudential tension of labour law, and it runs through every provision of the Bangladesh Labour Act, 2006, and every attempt to reform it.

The great German legal sociologist Hugo Sinzheimer, writing in the early twentieth century, identified this tension when he argued that labour law must be understood as a form of "law of the social," a branch of legal regulation that breaks decisively with the individualist premises of classical private law and recognizes the collective dimension of the employment relationship. Sinzheimer's insight was that the labour contract could not be understood purely on the model of a commercial contract, because the object of the labour contract is not merely a service or a commodity but a human being's time, body, and creative capacity. The worker who sells his or her labour power does not merely transfer a product; the worker submits to authority, to discipline, to the direction of another's will, for the duration of the working day. This submission, Sinzheimer argued, required special legal recognition and special legal protection.

The English legal historian Otto Kahn-Freund later elaborated this insight in his classic observation that "the main purpose of labour law is to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship." This statement, though simple, carries enormous jurisprudential freight. It implies, first, that inequality of bargaining power is not an accidental feature of employment but is structural and inherent. Second, it implies that the law has an active role in redressing this inequality, rather than merely neutrally enforcing whatever agreement the parties happen to reach. Third, it implies that labour law is inherently a political enterprise, because the question of how far the law should go in redressing the structural disadvantage of workers is always and inevitably a question of political choice, ideological commitment, and distributional preference.

In Bangladesh, this question has been answered in a particular way by a particular history, and understanding that history is essential to any serious commentary on the existing law or any serious proposal for its reform.

### 1.2 The Philosophical Genealogy of Labour Law: From Natural Rights to Social Democracy

The philosophical ideas that animate modern labour law have deep roots in the history of Western political philosophy, but they have also been shaped by distinctly non-Western experiences, including the colonial experience of South Asia. Understanding the philosophical genealogy of labour law requires attention to multiple intellectual traditions and their interactions.

The earliest philosophical defense of workers' rights drew upon the natural rights tradition associated with John Locke. Locke's argument that every person has a natural right to the fruits of his or her labour was potentially radical in its implications, for it suggested that the expropriation of the worker's product by the employer was, in some fundamental sense, a violation of the worker's natural right. But Locke was careful to cabin this argument in ways that protected the institution of private property and the wage contract, and his natural rights framework ultimately provided more support for the rights of property owners than for the rights of wage labourers.

It was Jean-Jacques Rousseau who first articulated, in systematic form, the idea that extreme inequality of economic condition was incompatible with genuine political freedom. Rousseau's argument in The Social Contract and the Discourse on Inequality that legitimate political authority must rest upon a social compact that promotes the common good, not merely the interests of the powerful, provided a philosophical foundation for the idea that the state has a legitimate interest in regulating the terms and conditions of employment. If the social contract requires that all citizens be genuinely free and capable of participation in political life, and if extreme poverty or economic dependency renders genuine freedom impossible, then the state is obligated to intervene in the labour market to prevent conditions incompatible with citizenship.

This Rousseauian tradition found its most powerful nineteenth-century expression in the work of Karl Marx, whose analysis of the wage-labour relationship in Capital and elsewhere constitutes the most thorough and sustained philosophical critique of the employment relationship ever produced. Marx's argument, briefly stated, is that the wage contract is a form of exploitation disguised as free exchange. The worker, formally free to contract and formally equal before the law, is in practice compelled to sell his or her labour power to the owner of capital, because the worker has been separated from any other means of subsistence. The price the worker receives for this labour power, the wage, is systematically less than the value the worker's labour creates, and this difference, surplus value, is appropriated by the capitalist. Labour law, from this perspective, is a mechanism through which capitalist society manages and moderates exploitation without abolishing it, maintaining the loyalty and consent of the working class while preserving the fundamental structures of capital accumulation.

The Marxist analysis of labour law, however, has been the subject of intense debate and revision in recent decades. The December 2024 paper by Maja Breznik in the Industrial Law Journal, drawing on Evgeny Pashukanis's theory of legal form, offers a sophisticated account of the contradiction between labour law's formal legal equality and the material inequality it regulates. Pashukanis argued that the legal form itself, the reduction of social relations to relations between formally equal legal subjects, is a specifically capitalist form of social regulation, and that labour law, insofar as it operates through this legal form, necessarily reproduces rather than transcends the power relations of capitalism. Yet Breznik also notes the counter-argument associated with the French legal scholar Alain Supiot, who characterizes labour law not as capitalist law but as "collective," "class," or "social" law that creates conditions for transformative social change.

The republican philosophical tradition, associated in its contemporary form with Philip Pettit and developed in the context of labour law by Alan Bogg and others, offers a different framework. Republicans argue that the fundamental wrong of the employment relationship is not exploitation

in the Marxist sense but domination: the subjection of the worker to the arbitrary will of the employer, the dependence of the worker's welfare and security upon another's discretion and decision. What labour law should aim to protect, on this account, is not merely the worker's economic interests but the worker's status as a non-dominated person, free from arbitrary interference and genuinely capable of exercising agency in the conditions of working life. This republican framework has been influential in recent Anglo-American labour law scholarship, and it has obvious relevance to the conditions of workers in Bangladesh, where vulnerability to arbitrary employer power is a pervasive and documented reality.

John Rawls's theory of justice provides yet another philosophical lens through which to assess labour law. Rawls argued that a just society is one that could be agreed to by all rational persons who did not know in advance what position they would occupy in the social order, the famous "veil of ignorance." From behind the veil of ignorance, rational persons would choose principles of justice that protect the most vulnerable members of society, because they might themselves turn out to be in that position. Applied to labour law, a Rawlsian analysis would suggest that rational persons, not knowing whether they would be wealthy employers or impoverished workers, would agree to robust legal protections for workers: minimum wages, safe working conditions, the right to organize and bargain collectively, and protections against arbitrary dismissal. The extensive scholarship on Rawls and labour law, including recent work reviewed in the Oxford academic context as of early 2024, suggests that while Rawlsian principles support strong worker protections, they leave significant questions about the precise institutional arrangements through which such protections should be secured.

Finally, the feminist tradition in labour law philosophy, developed by scholars such as Judy Fudge, Joanne Conaghan, and others, insists that mainstream labour law theory, including most of the traditions described above, has been deeply shaped by a gendered conception of the "standard employment relationship" as a relationship between a male breadwinner and a male employer, and has failed to theorize adequately the labour of women, including domestic labour, care work, and the many forms of non-standard employment in which women are disproportionately represented. In Bangladesh, where millions of women work in the ready-made garments (RMG) sector and in domestic service under conditions of acute vulnerability, this feminist critique has profound practical relevance.

### 1.3 The Contractual Foundations and Their Limits: From Servant Law to Labour Law

The modern employment relationship is legally constituted through the contract of employment, and understanding the nature and limitations of this contractual foundation is essential to any serious analysis of labour law. The contract of employment has a peculiar history: it evolved from the legal regime of master and servant, a regime that was explicitly hierarchical, status-based, and coercive, and which treated the servant's breach of contract as a criminal matter, subject to imprisonment or corporal punishment. The transition from master-servant law to modern employment contract law involved a rhetorical shift from status to contract, from obligation to voluntary agreement, but it did not necessarily involve a fundamental change in the power relations that characterize employment.

The great Victorian jurist Henry Maine famously described the movement of progressive societies as a movement "from status to contract," by which he meant that the old hierarchical arrangements based on birth, rank, and inherited position were being replaced by voluntary agreements between formally free individuals. This narrative of liberal progress was enormously influential, but it obscured as much as it revealed. For while the language of the employment relationship shifted from status to contract, the practical reality remained one of profound inequality. The worker who signed an employment contract was formally free and formally equal, but the worker who refused to sign was, in most cases, destitute. The freedom of contract was, as Marx observed, a peculiar kind of freedom: the freedom to sell one's labour power or to starve.

It was precisely to address this reality that labour law began to develop as a distinct field, imposing public law constraints upon the formally private relationship of employment. Minimum wages, maximum hours, health and safety standards, collective bargaining rights: all of these represent interventions by the state into what contract law would otherwise treat as the parties' own business. And all of these interventions have been justified, in different ways, by different aspects of the philosophical traditions surveyed above.

In Bangladesh, the evolution from colonial master-servant law to modern labour regulation follows a distinctive trajectory that is deeply marked by the colonial experience, the structures of postcolonial politics, and the particular characteristics of the Bangladeshi economy. Understanding this trajectory requires a sustained historical investigation, which forms the subject of Chapter Two. But before embarking on that historical investigation, it is necessary to say something about the jurisprudential character of the legal field being examined.

### 1.4 Jurisprudence of Labour Law: Positivist, Naturalist, and Critical Perspectives

Legal positivism, associated with Jeremy Bentham, John Austin, and H.L.A. Hart, holds that law is a system of rules that derive their authority not from any moral quality but from their having been enacted through legitimate legal processes by those with the authority to make law. A positivist approach to Bangladeshi labour law would focus on identifying the valid rules of the Bangladesh Labour Act, 2006, their formal sources and scope, their relationship to other legal provisions, and the processes through which they are enforced and adjudicated. This is the approach taken by most practical legal analysis, and it is indispensable for any working understanding of the law.

But positivism, taken alone, is insufficient for the kind of comprehensive critical commentary that this textbook aspires to provide. Legal positivism cannot tell us whether the rules contained in the Bangladesh Labour Act, 2006, are good rules, or whether they achieve the goals they are supposed to achieve, or whether they serve the interests of those they are supposed to protect. To answer these questions, we need to go beyond positivism.

Natural law theory, in its classical and contemporary forms, holds that law must conform to certain moral standards derived from reason, human nature, or divine command, and that laws that fail to conform to these standards lack genuine moral authority. The natural law tradition has provided resources for the critique of exploitative labour practices, from the medieval

condemnation of usury to the modern articulation of workers' rights as human rights. The claim that workers have a natural or human right to fair wages, safe working conditions, and the right to organize is a natural law claim, and it has been enormously influential in international labour standards, particularly in the framework of the International Labour Organization.

Critical legal studies (CLS), which emerged in American legal academia in the 1970s and 1980s and has since developed numerous international variants, takes a very different approach. CLS scholars argue that law is not a neutral system of rules but is permeated by ideological commitments that systematically favor the powerful over the powerless. Labour law, from a CLS perspective, appears not as a protection for workers but as a mechanism for legitimating and stabilizing the power of capital, by creating just enough protection to prevent revolt while leaving the fundamental structures of exploitation intact. Roberto Unger's critique of legal formalism, Duncan Kennedy's analysis of the fundamental contradiction between individual freedom and social constraint, and Zoe Adams's recent critique of trade union legal mobilization all belong to this tradition.

The postcolonial legal theory that has emerged from the work of scholars such as Upendra Baxi, Ratna Kapur, and Mahmood Mamdani offers yet another perspective. Postcolonial legal theory insists that the law of formerly colonized societies cannot be understood without attention to the colonial legal heritage that shaped it. The transplantation of British common law and statutory frameworks to South Asia was not a neutral process of legal diffusion but a political act of imperial power that served the interests of the colonial state and the colonial economy. The labour law of Bangladesh, which descends directly from British Indian legislation, cannot be fully understood without attending to this colonial genealogy and the ways in which colonial legal structures continue to shape, distort, and constrain the possibilities of legal reform.

This textbook adopts a pluralist jurisprudential approach: it takes seriously the insights of positivism, natural law theory, Marxist and critical legal theory, republican political philosophy, feminist jurisprudence, and postcolonial theory, and attempts to deploy them in an integrated and mutually enriching way. The goal is not theoretical eclecticism for its own sake but a richer and more complete understanding of a complex legal reality.

### 1.5 Labour Law and Human Rights: The Emerging Synthesis

One of the most significant jurisprudential developments of the late twentieth and early twenty-first centuries has been the reconceptualization of labour rights as human rights. This reconceptualization has been driven by several convergent forces: the internationalization of labour standards through the ILO framework, the development of international human rights law, the decisions of regional human rights courts, and the theoretical work of scholars who have argued that the right to work, the right to just and favorable conditions of work, and the right to organize and bargain collectively are genuine human rights deserving the same respect and protection as civil and political rights.

The most ambitious version of this claim is associated with the work of philosophers such as James Nickel, Henry Shue, and Virginia Mantouvalou, who have argued that workers' rights are not merely welfare rights or claims of distributive justice but fundamental human rights

grounded in the dignity, autonomy, and equal worth of all persons. Mantouvalou's work, in particular, has emphasized the way in which the denial of workers' rights constitutes a denial of the worker's humanity, reducing the worker to an instrument of another's purposes rather than recognizing the worker as an end in himself or herself.

This human rights approach to labour law has important implications for the analysis of Bangladesh's labour law framework. Bangladesh is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to work, the right to just and favorable conditions of work, the right to form and join trade unions, and the right to social security. Bangladesh has ratified 39 ILO Conventions, including all 10 fundamental conventions. These international commitments create legal obligations that are directly relevant to the assessment of domestic labour law, and they provide normative standards against which the adequacy of domestic legislation can be measured.

The relationship between international human rights norms and domestic law in Bangladesh is governed primarily by the Constitution of Bangladesh, 1972, and the relevant doctrines of constitutional law. Article 7 of the Constitution establishes the supremacy of the Constitution, while the Fundamental Rights provisions in Part III guarantee certain civil and political rights. The Fundamental Principles of State Policy in Part II include provisions on the right to work, just conditions of work, and the like, but these are not directly enforceable as fundamental rights. This constitutional architecture creates a complex relationship between international labour standards and domestic legal obligations, a relationship that has been the subject of significant judicial elaboration and considerable doctrinal controversy.

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## CHAPTER TWO: HISTORICAL FOUNDATIONS OF LABOUR LAW IN BANGLADESH: FROM COLONIAL EXTRACTION TO POSTCOLONIAL STATE-BUILDING

### 2.1 The Pre-Colonial Labour Regime: Land, Caste, and the Organization of Work

Before the British colonial encounter, the Bengal delta, which comprises the core of what is now Bangladesh, was characterized by a highly complex and diversified agrarian economy organized around rice cultivation, textile production, trade, and craft manufacture. The labour arrangements that governed this economy were shaped by a combination of caste hierarchies, landlord-peasant relationships, communal obligations, and seasonal patterns of agricultural production. Labour in this pre-colonial context was not primarily organized through the wage contract; it was organized through status relationships, reciprocal obligations, and embedded social arrangements that defied easy categorization in the vocabulary of modern labour law.

The famous Bengal muslin, produced in the Dhaka region, represented one of the most sophisticated textile industries in the world, employing specialized weavers whose skills were transmitted through hereditary communities and whose products found markets in the great commercial cities of Asia and Europe. The organization of this industry was not that of a modern capitalist enterprise; it was organized through networks of putting-out merchants who advanced

raw materials to household producers, a form of production that combined elements of craft autonomy with commercial dependence. The weavers of Bengal were, in a significant sense, proto-proletarians, formally self-employed but substantively dependent upon the merchants who controlled access to markets and raw materials.

The agrarian social structure of pre-colonial Bengal was dominated by a complex hierarchy of rights in land, ranging from the zamindars (landlords) at the top through various intermediate tenure-holders to the actual cultivators at the bottom. The cultivators' obligation to provide labour services to the zamindars, known as begari, was a form of unfree labour that existed alongside various forms of share-cropping, cash tenancy, and wage labour. This complex agrarian structure was to be profoundly disrupted by the colonial encounter, in ways that had lasting consequences for the labour relations of the region.

### 2.2 The Colonial Encounter: British India and the Legal Transformation of Labour

The East India Company's conquest of Bengal, culminating in the Battle of Plassey in 1757 and the assumption of the Diwani (revenue collection rights) in 1765, initiated a process of economic and legal transformation that fundamentally restructured the labour relations of the Bengal delta. The colonial state required a legal framework for managing the labour force of its plantations, factories, and administrative apparatus, and it constructed this framework through a series of legislative enactments that drew upon both English common law and adaptations of indigenous legal forms.

The most important early colonial intervention in labour relations was the Permanent Settlement of 1793, introduced by Lord Cornwallis. The Permanent Settlement transformed the zamindars from tax farmers into private landowners in the English sense, thereby creating a class of landlords with legal ownership rights over the land and the authority to extract rents from the cultivators. The cultivators, who had previously possessed a complex bundle of use rights and customary entitlements, were reduced to the status of tenants-at-will, subject to rack-renting and eviction. The Permanent Settlement thus created the legal foundations for a highly exploitative agrarian system in which the cultivating classes were systematically dispossessed and pauperized.

The colonial period also saw the introduction of a series of legislative measures explicitly designed to control and discipline the labour force of the colonial economy. The Workmen's Breach of Contract Act, 1859, made it a criminal offence for workers to breach their employment contracts, effectively constituting a form of penal servitude that applied to agricultural labourers, domestic servants, and factory workers alike. This legislation was bitterly contested by labour advocates in both India and Britain, and it represented a clear example of the colonial state's willingness to use criminal law as a tool of labour coercion, in stark contrast to the liberal rhetoric of free contract that supposedly governed employment relationships in the metropole.

The Factory Acts enacted during the colonial period introduced minimum standards of occupational safety and working hours, but they were consistently shaped by the demands of the industrial lobby and offered only minimal protections for workers. The first Indian Factories Act was passed in 1881, primarily in response to concerns about child labour and the excessive

working hours imposed in the cotton mills of Bombay and Bengal. Subsequent amendments in 1891 and 1911 extended and elaborated the protective provisions, but enforcement was consistently weak and the scope of coverage was limited to large-scale enterprises.

The Mines Act, 1923, the Workmen's Compensation Act, 1923, the Trade Unions Act, 1926, and the Industrial Disputes Act, 1947, represent the core of the colonial labour law legacy that was inherited by the successor states of British India at independence. These acts were shaped by the particular concerns of the colonial state, the interests of the colonial capitalists, and the limited concessions wrung from them by the emerging trade union movement. They were not designed with the interests of the working class as the primary consideration; they were designed to maintain social order, ensure the continued profitability of colonial industry, and manage the political demands of a nascent nationalist labour movement.

The Trade Unions Act, 1926, deserves particular attention as a foundational text. It established the legal framework for trade union registration and collective bargaining that persisted in the subcontinent for decades after independence. The Act was a product of intense political negotiation between the colonial state, the employers' lobby, and the labour movement, and it reflected a series of compromises that left the structural power of employers largely intact while conceding formal recognition to trade unions. The Act required a minimum membership of seven workers for union registration, but it contained no provisions for recognition of unions as collective bargaining agents, no requirement that employers bargain in good faith, and no effective remedies for anti-union discrimination.

The Indian Independence Act, 1947, and the subsequent partition of British India created two new sovereign states: India and Pakistan. The eastern wing of Pakistan, comprising the territory of East Bengal that had been part of British India, became East Pakistan, and it was in this context that the labour law of what would become Bangladesh began its distinctive trajectory.

### 2.3 The Pakistan Period (1947-1971): Labour Law in the Context of Colonial-Within-Colonial Exploitation

The emergence of East Pakistan as one wing of the new state of Pakistan in 1947 created a peculiar situation in which the Bengali population of the east found themselves simultaneously liberated from British colonial rule and subjected to a new form of political and economic domination by the West Pakistani ruling class. This relationship has been described by historians as "internal colonialism," and it had profound implications for the development of labour law and labour relations in East Pakistan.

The economy of East Pakistan was predominantly agricultural, based on jute cultivation and processing, with jute being the primary export commodity. The jute mills, concentrated in the Dhaka-Narayanganj corridor, were owned primarily by West Pakistani and non-Bengali business interests and employed a large industrial proletariat drawn from the rural areas of East Bengal. The working conditions in the jute mills were notoriously harsh, and the workers had limited legal protections and even more limited practical ability to assert those protections against powerful employers with strong connections to the state.

The government of Pakistan initially continued to apply the colonial labour legislation that had been in force at partition, making adaptations as necessary. The Factories Act, 1934, the Trade Unions Act, 1926, the Industrial Disputes Act, 1947, and related legislation continued to govern labour relations in East Pakistan. These colonial statutes were supplemented by a series of Pakistani legislation in the 1950s and 1960s that reflected the political economy of the Pakistani state, which was oriented primarily toward the interests of the military-bureaucratic-industrial establishment and not toward the protection of workers' rights.

The Industrial Disputes Act, 1947, was modified by the Essential Services Maintenance Act, 1952, and related legislation that significantly curtailed the right to strike in industries deemed essential to the state. The Trade Unions Act was supplemented by the Industrial Relations Ordinance, 1969, which introduced a system of collective bargaining units and collective bargaining agents that was modeled partly on the American Wagner Act of 1935 but adapted to the Pakistani context in ways that placed significant constraints upon union autonomy and collective action.

The political subordination of East Pakistan to West Pakistani interests was accompanied by systematic economic discrimination. East Pakistan generated the majority of Pakistan's foreign exchange earnings through jute exports, but it received a disproportionately small share of public investment and development expenditure. The result was a pattern of economic underdevelopment that kept wages low, limited workers' alternative employment opportunities, and maintained the structural vulnerability of the Bengali working class. This pattern of internal colonialism was a major grievance of the Bengali nationalist movement that culminated in the Liberation War of 1971.

The labour movement played a significant role in the Bengali nationalist struggle. Trade unions were active participants in the political movements of the 1950s and 1960s that challenged West Pakistani domination, including the Language Movement of 1952, the Six-Point Movement of 1966, and the mass uprising of 1969. The workers of the jute mills, the transport sector, and other industries participated in the general strikes and political mobilizations that preceded the Liberation War. The political consciousness of the Bangladeshi working class was thus forged in the crucible of anti-colonial struggle, and this political heritage has continued to shape the character of labour relations and labour politics in Bangladesh.

### 2.4 The Liberation War of 1971 and Its Labour Dimensions

The Liberation War of 1971, which resulted in the creation of the independent state of Bangladesh, was not simply a war of national self-determination; it was also, in important respects, a class struggle. The Bengali masses who rose in arms against the Pakistani military were not only asserting their national and cultural identity; they were also asserting the economic and social rights that had been denied to them under the structure of Pakistani internal colonialism.

The Awami League, which led the liberation struggle, had significant connections to the trade union movement through its labor wing, the Jatiya Sramik League. Workers' organizations participated in the civil disobedience campaign of March 1971, when General Yahya Khan's

imposition of martial law and the cancellation of the election results triggered a mass movement that effectively paralyzed the Pakistani state apparatus in East Bengal. After the Pakistani military crackdown of 25 March 1971, workers joined the armed resistance movement alongside students, intellectuals, and members of the security forces.

The Bengali intelligentsia that shaped the constitutional and legal framework of the new state of Bangladesh were deeply influenced by social democratic ideas, and the Constitution of 1972 reflected this influence. The Constitution established Bangladesh as a sovereign democratic republic with socialism as one of the four fundamental state principles (alongside nationalism, democracy, and secularism). The inclusion of socialism as a fundamental principle reflected the social democratic aspirations of the independence movement, though the term was interpreted in a variety of ways by different political actors.

The fundamental state principles of the 1972 Constitution included several provisions relevant to labour rights and labour relations. Article 14 committed the state to the liberation of the toiling masses from exploitation. Article 15 guaranteed the right to work, a reasonable wage, and decent conditions of work as fundamental principles of state policy. Article 19 committed the state to reducing inequality of opportunity and wealth. These provisions reflected a genuine social democratic vision that was, however, to be severely tested by the economic and political crises of the early independence period.

The physical and economic destruction caused by the Liberation War, combined with the political instability and institutional weakness of the new state, created enormous challenges for the development of labour law and labour administration in independent Bangladesh. The famine of 1974-1975, which claimed hundreds of thousands of lives, was a catastrophe that demonstrated the extreme vulnerability of the Bangladeshi working class and peasantry and the inability of the new state to protect the most basic economic rights of its citizens.

The assassination of Sheikh Mujibur Rahman in August 1975 and the subsequent military coups brought to power regimes that were less committed to the social democratic vision of the 1972 Constitution and more oriented toward the interests of the military establishment, the business class, and international donors. The constitutional amendments of 1977 removed socialism as a fundamental principle of the constitution (though it was later partially restored), reflecting a broader ideological shift away from social democracy and toward market-oriented development.

### 2.5 The Post-Liberation Legal Framework: Inherited Structures and New Demands

The new government of Bangladesh was faced with the urgent task of establishing a functioning legal system from the ruins of the Liberation War. The approach adopted was pragmatic rather than revolutionary: most of the existing legislation, including the colonial labour statutes that had continued to apply in East Pakistan, was retained and continued to apply in Bangladesh. This decision was understandable given the urgency of restoring normalcy and the limited administrative capacity of the new state, but it had significant long-term consequences for the development of labour law.

The primary legislative vehicle for this continuity was the Laws Continuance Enforcement Order, 1971, which provided that all laws in force in East Pakistan immediately before the declaration of independence would continue to apply in Bangladesh until they were amended or repealed. This means that the foundational legal framework of Bangladeshi labour law, at the moment of independence, was essentially the same as the framework that had existed under British and Pakistani rule: the Factories Act, the Industrial Disputes Act, the Trade Unions Act, and related colonial-era legislation.

During the early independence period, the government introduced some new legislation that reflected the social democratic commitments of the 1972 Constitution. The Bangladesh Labour (Standing Orders) Act, 1965, which had applied in East Pakistan, continued to apply and provided some basic protections for workers in terms of standing orders governing employment conditions. The Industrial Relations Ordinance, 1969, which had introduced the collective bargaining framework, was also retained and continued to apply.

The government of Sheikh Mujibur Rahman nationalized significant sectors of the economy, including the jute mills, the textile industries, and the banking sector. This nationalization created a new category of state-owned enterprise workers whose labour relations were governed by a complex web of national and enterprise-level provisions, often applied inconsistently and with significant vulnerability to political interference. The nationalized enterprises were frequently managed by political appointees rather than professional managers, and they became sites of intense political patronage and corruption that undermined both economic efficiency and workers' rights.

The period of military rule under General Ziaur Rahman (1975-1981) and General Hussain Muhammad Ershad (1982-1990) was characterized by significant restrictions on trade union rights and collective action. The military governments sought to manage labour relations through a combination of state corporatism, in which official trade unions affiliated with the ruling party were permitted to operate while independent unions faced harassment, and strict limits on the right to strike, particularly in industries deemed essential to the national interest.

This pattern of state corporatism in labour relations, in which the state attempts to manage the relationship between employers and workers through the control of officially sanctioned labour organizations, has deep roots in the political culture of Bangladesh and continues to shape labour politics today. Understanding this pattern requires attention to the theoretical literature on labour corporatism and its relationship to both authoritarian politics and democratic governance.

### 2.6 The Democratization Period (1990-2006): Labour Law Reform in the Context of Export-Led Growth

The restoration of parliamentary democracy in 1990, following the mass uprising that ousted General Ershad, created a new political context for labour law reform. The 1990s saw the rapid expansion of the ready-made garments (RMG) sector, which would transform the Bangladeshi economy and the Bangladeshi working class in profound ways. The RMG sector grew from a tiny base in the early 1980s to become, by the late 1990s, the dominant force in Bangladeshi export earnings and a major employer, particularly of women workers from rural areas.

The expansion of the RMG sector occurred in the context of the Multi-Fibre Arrangement (MFA), an international trade regime that imposed quotas on textile and garment exports from major developing countries and thereby created a market opening for Bangladesh, which was not yet subject to MFA quotas. This trade policy windfall provided the initial stimulus for the explosive growth of the Bangladeshi garment industry, and it attracted significant foreign investment and buyer relationships with major international brands.

The labour relations of the RMG sector from its inception were characterized by intense exploitation of a largely female workforce, inadequate safety standards, and systematic suppression of collective action. Factory owners, often with strong political connections, exercised near-absolute power over their workers, and the state was frequently complicit in this suppression through its failure to enforce existing labour standards and its readiness to use the police and security forces against labour activists.

The international buyer relationships that drove the expansion of the RMG sector also, over time, created pressure for improvement in labour standards, as Western brands became increasingly concerned about reputational risks associated with labour abuses in their supply chains. This external pressure was to become an increasingly important driver of labour law reform in Bangladesh, operating in complex interaction with domestic labour politics and international institutional frameworks.

The Bangladesh Labour Act, 2006, which is the primary subject of this textbook, emerged from a lengthy reform process that sought to consolidate and rationalize the existing patchwork of colonial-era labour statutes into a single comprehensive framework. The process was initiated in the late 1990s and continued through the early 2000s, involving consultations with employers, workers, and international advisers, particularly from the International Labour Organization.

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## CHAPTER THREE: THE BANGLADESH LABOUR ACT, 2006: ARCHITECTURE, PRINCIPLES, AND CRITIQUES

### 3.1 The Legislative History of the Bangladesh Labour Act, 2006

The enactment of the Bangladesh Labour Act, 2006 (BLA 2006), represented a significant milestone in the development of Bangladesh's labour law framework. It consolidated and replaced no fewer than 25 pre-existing pieces of legislation, ranging from colonial-era statutes to more recent enactments, and attempted to create a unified, comprehensive, and modernized framework for governing labour relations across all sectors of the economy outside the Export Processing Zones (EPZs).

The process that led to the enactment of BLA 2006 was long, complex, and frequently contested. Drafts of the legislation were circulated and debated over several years, with significant input from the International Labour Organization, employers' organizations, trade unions, and civil society. The ILO's involvement was particularly important, as it brought both technical expertise and the normative framework of international labour standards to bear on the drafting process.

However, the extent to which international standards were actually incorporated into the final text was a matter of considerable controversy, with labour rights advocates arguing that the legislation fell significantly short of Bangladesh's international obligations.

The political economy of the legislative process reflected the power dynamics of Bangladeshi society. The garment industry, represented by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), was the most powerful private sector lobby and was able to exercise considerable influence over the legislative process. The BGMEA consistently opposed provisions that would impose significant costs on garment manufacturers, including stronger enforcement mechanisms, higher wage standards, and more effective trade union rights. The weakness of the trade union movement, fragmented into hundreds of small unions affiliated with different political parties and lacking the organizational capacity to mount a sustained campaign for stronger legislation, meant that the voices of workers were far less effectively represented in the legislative process than those of employers.

The result was a legislative compromise that provided a formal framework of worker protections while leaving the structural power of employers largely intact. The BLA 2006 contains provisions on minimum wages, working hours, leave, maternity benefits, health and safety, trade unions, collective bargaining, and dispute resolution that, on their face, appear to offer significant protections for workers. But the legislation also contains significant loopholes, weak enforcement provisions, and structural features that have allowed employers to evade their obligations with considerable impunity.

### 3.2 The Structure and Scope of the Bangladesh Labour Act, 2006

The Bangladesh Labour Act, 2006 is organized into twenty-one chapters covering the full range of labour regulation. Chapter I deals with definitions and preliminary matters, establishing the scope and application of the Act. Chapter II deals with conditions of service and employment, including provisions on employment contracts, appointment letters, service books, and related matters. Chapter III provides the legal framework for the relationship between employers and workers, including provisions on standing orders that govern the day-to-day operation of employment.

Chapter IV deals with working hours and leave, establishing the legal standards for working time, rest periods, and various categories of leave including annual leave, sick leave, and casual leave. Chapter V establishes the framework for maternity protection, including maternity leave and maternity benefit. Chapter VI deals with wage and payment, including provisions on the payment of wages, deductions, and wage payment modalities.

Chapter VII establishes the framework for worker compensation in cases of injury or disease arising from employment, drawing upon and superseding the earlier Workmen's Compensation Act. Chapter VIII deals with health, hygiene, and safety in workplaces, establishing minimum standards for the physical environment of work. Chapter IX provides special provisions for particular categories of workers, including women, young persons, and workers in particular industries.

Chapters X through XIV deal with the regulation of collective labour relations, including provisions on trade unions, collective bargaining, and industrial disputes. These chapters establish the legal framework for the formation and registration of trade unions, the designation of collective bargaining agents, the machinery for the resolution of industrial disputes, and the regulation of strikes and lock-outs.

Chapter XV deals with workers' participation in profits through the Workers' Profit Participation Fund. Chapters XVI and XVII deal with the administration of the Act, including the role of the Department of Inspection for Factories and Establishments (DIFE) and the Labour Courts. Chapters XVIII through XXI deal with miscellaneous matters including penalties, repeals, and transitional provisions.

The scope of the BLA 2006 is limited by certain important exclusions. The Act does not apply to establishments in the Export Processing Zones (EPZs), which are governed by separate legislation, initially the Export Processing Zones Workers Associations and Industrial Relations Act, 2004, and more recently the EPZ Labour Act, 2019. The Act also does not explicitly cover agricultural workers, domestic workers, or workers in the informal economy, leaving the majority of the Bangladeshi workforce outside its protective framework.

The exclusion of the EPZs from the general labour law framework has been a matter of continuing controversy. The EPZs, administered by the Bangladesh Export Processing Zones Authority (BEPZA), have been characterized by a distinct labour relations regime that has historically allowed less stringent protection of collective bargaining rights than the general labour law framework. This distinction has been the subject of sustained criticism from international labour rights organizations and has been a major focus of ILO concern in its monitoring of Bangladesh's compliance with ILO standards.

### 3.3 The Definition of "Worker" and Its Doctrinal Significance

One of the most fundamental and jurisprudentially significant provisions of any labour statute is the definition of "worker" or "employee," because this definition determines who is entitled to the protections the statute provides. The Bangladesh Labour Act, 2006 defines "worker" in Section 2(65) as any person including an apprentice employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied. Excluded from this definition are persons employed mainly in a managerial or administrative capacity, and persons whose employment is mainly of a supervisory character.

This definition, while significantly broader than the definition contained in some predecessor statutes, continues to exclude large categories of workers who perform productive labour but do so in conditions that do not fit the standard employment model. The most significant exclusions are:

First, domestic workers. Persons employed in household service, cooking, cleaning, childcare, and related tasks within private homes are not covered by the BLA 2006 definition of "worker," leaving millions of domestic workers, the vast majority of whom are women, without statutory

protection for their wages, working hours, safety, or right to organize. This exclusion has been the subject of sustained advocacy by women's rights organizations and labour rights groups, and it is directly relevant to Bangladesh's obligations under ILO Convention No. 189 concerning decent work for domestic workers.

Second, agricultural workers. Persons employed in agricultural operations, while technically within the literal scope of the definition if employed on a wage basis, are in practice largely excluded from the protective framework of the Act because the Act's enforcement mechanisms are designed for the formal industrial and commercial sector and are largely inaccessible to agricultural workers who lack formal employment documentation and are often employed in informal and seasonal arrangements.

Third, home-based workers. Workers who perform productive tasks, including garment assembly, embroidery, and other craft work, in their homes, typically as part of a sub-contracting chain, do not fall within the standard definition of "worker" employed by an "establishment," because they do not work in a defined workplace and their relationship with the contractor who provides the work may not be readily characterized as employment in the legal sense.

The 2025 amendment to the BLA, which was promulgated by Ordinance on 17 November 2025, took a significant step in addressing the exclusion of domestic workers by broadening the definition of "worker" to include domestic workers and seafarers. This is a landmark change, though its practical significance will depend critically upon the development of effective enforcement mechanisms appropriate to the particular circumstances of domestic work, which is performed in private homes and therefore raises distinctive challenges for labour inspection.

The doctrinal analysis of the worker definition connects to broader jurisprudential debates about the nature and purpose of the concept of employment in labour law. The English legal philosopher Mark Freedland has argued that the reliance of labour law upon the binary distinction between employees (who are fully protected) and independent contractors (who are not) is increasingly inadequate in a world of diverse and non-standard work arrangements, and has advocated for a broader concept of the "personal work relation" that would extend labour law protections to a wider range of workers on the basis of economic dependence and personal service, rather than on the formal criterion of employment status. This theoretical framework has significant implications for the analysis of the Bangladeshi case, where the majority of the workforce is employed in arrangements that do not fit the standard model of dependent employment.

The gig economy, which has expanded significantly in Bangladesh with the growth of platforms such as ride-hailing services, food delivery, and other digitally mediated work arrangements, presents additional challenges for the application of the worker definition. Workers employed through digital platforms typically occupy a legal gray zone, classified as independent contractors by the platforms that deploy them but in practice exercising little autonomy and dependent upon the platform for their income. The adequacy of the existing definition of "worker" to encompass platform workers is a pressing issue that the 2025 amendment does not fully resolve, and it represents a significant challenge for future reform.

### 3.4 The Minimum Wage Framework: Legal Architecture and Structural Inadequacies

The minimum wage is perhaps the most widely recognized and politically contested element of any labour law framework, and the minimum wage provisions of the Bangladesh Labour Act, 2006 and the institutions through which minimum wages are set are of fundamental importance for the welfare of Bangladeshi workers.

The Act establishes a Minimum Wages Board (MWB), which is a tripartite body consisting of representatives of the government, employers, and workers, with a neutral chairperson appointed by the government. The MWB is responsible for investigating the cost of living and recommending minimum wage rates for different industries and categories of workers. The government then establishes minimum wage rates by gazette notification, and these rates are legally binding upon all employers covered by the Act.

The minimum wage rate for the Ready-Made Garments sector, which employs approximately 4 million workers (about 80 percent of whom are women), was set at BDT 8,000 per month in 2018, following intense industrial action and significant social unrest. In December 2023, following another round of worker protests and strikes, the minimum wage for RMG workers was raised to BDT 12,500 per month. While this represents a significant nominal increase, the real value of the minimum wage has been eroded by inflation, and labour rights advocates argue that it remains well below the living wage that workers need to meet their basic needs.

The process by which the RMG minimum wage was set in 2023 was highly contentious and illustrates many of the structural problems with the minimum wage system. Workers had demanded a minimum wage of BDT 23,000 per month, citing the rising cost of food, housing, transportation, and other necessities. The MWB initially recommended BDT 10,400 per month, which was subsequently revised upward to BDT 12,500 after protests and work stoppages at hundreds of factories resulted in clashes between workers and security forces, with multiple fatalities reported. The final wage figure, while higher than the initial MWB recommendation, remained far below what workers demanded and far below independent estimates of a living wage.

The legal and jurisprudential analysis of the minimum wage raises several important questions. First, what is the normative basis of the minimum wage? Is it simply a floor that prevents the most extreme forms of exploitation, or should it be set at a level that allows workers to live with dignity, support their families, and participate in the social and cultural life of their communities? The distinction between a minimum wage and a living wage is not merely semantic; it reflects fundamentally different visions of what labour law is for and whose interests it serves.

Second, who should decide what the minimum wage should be? The tripartite MWB structure formally gives workers a role in this decision, but the structural power imbalance between employers and workers means that employer interests typically prevail in MWB deliberations, and the government's role as arbiter tends to favor the employer position to the extent that the government is concerned about the competitiveness of the export sector and the attraction of foreign investment.

Third, how should minimum wage rates be adjusted over time to maintain their real value? The lack of automatic indexation of the minimum wage to the cost of living means that the real value of the minimum wage is continuously eroded by inflation, and workers must engage in costly and often dangerous collective action to force upward revisions. This structural deficiency of the minimum wage system creates a pattern of periodic crises, in which the real wage falls to unsustainable levels, workers protest, and a new rate is established that begins the same cycle.

The philosophy of minimum wages connects to the broader theoretical debate about the relationship between wage regulation and economic efficiency. Mainstream neoclassical economics predicts that minimum wages above the market-clearing rate will reduce employment by making some workers too expensive to employ. This "disemployment effect" argument has been a staple of employer opposition to minimum wage increases in Bangladesh as elsewhere. However, the empirical evidence on this relationship is highly contested, and numerous econometric studies, including the influential work of David Card and Alan Krueger on minimum wages in the United States, have found little or no negative employment effect from moderate minimum wage increases. Moreover, even if there were some negative employment effect, this would not necessarily lead to the conclusion that minimum wages should not be increased, because the welfare gains to the workers who retain employment at higher wages might well outweigh the welfare losses to those who lose employment, particularly if the latter have access to social protection.

In Bangladesh, the empirical evidence on the employment effects of minimum wage increases in the RMG sector is mixed. Some studies have found that minimum wage increases have led factories to reduce their workforce, while others have found that the efficiency wage effects (higher wages leading to higher productivity and lower turnover) and the boost to domestic demand from higher wages have offset any negative employment effects. The complexity of the empirical picture suggests that policy-makers should be cautious about accepting the employer lobby's claims that minimum wage increases will devastate employment, while also recognizing that the design and implementation of minimum wage policy must be sensitive to the economic realities of a developing country heavily dependent on export manufacturing.

### 3.5 Working Time Regulation: International Standards and Bangladeshi Practice

The regulation of working time is one of the oldest and most fundamental concerns of labour law, and it has been the subject of significant statutory development in Bangladesh. The Bangladesh Labour Act, 2006 establishes a standard working time of eight hours per day and forty-eight hours per week. Overtime is permitted up to two hours per day, making the maximum permissible daily working time ten hours, and the maximum permissible weekly working time sixty hours. Overtime must be compensated at a rate of twice the normal wage rate.

These provisions appear to offer significant protection against excessive working hours, but in practice the regulation of working time in Bangladesh faces severe enforcement challenges. Garment factories routinely require workers to work overtime well beyond the legal limits, often with little or no additional compensation. The pressure of production orders with tight deadlines, combined with the lack of effective labour inspection and the vulnerability of workers who fear

dismissal if they refuse to work overtime, creates a system in which statutory working time limits are routinely violated.

The legal framework for working time in Bangladesh is also inadequate in several respects. The Act does not establish an effective mechanism for monitoring and enforcing working time standards; the Department of Inspection for Factories and Establishments (DIFE) lacks the inspectorate capacity to monitor compliance in the more than 100,000 establishments covered by the Act, and the fines for violations are too low to constitute an effective deterrent. The Act also lacks clear provisions for the right to disconnect, which has become increasingly relevant as digitally mediated communication blurs the boundaries between working time and personal time.

The ILO's Hours of Work (Industry) Convention, 1919 (Convention No. 1), which is one of the oldest ILO conventions and which Bangladesh has ratified, establishes the eight-hour day and forty-eight-hour week as international standards, with provisions for flexibility in particular circumstances. The ILO's Working Time Convention framework also includes the Hours of Work (Commerce and Offices) Convention, 1930 (Convention No. 30), and the Reduction of Hours of Work Recommendation, 1962 (Recommendation No. 116). Bangladesh's compliance with these conventions has been a subject of ILO monitoring, and the Committee of Experts has noted concerns about the gap between the legal framework and actual practice.

The feminist analysis of working time regulation is particularly important in the Bangladeshi context. The assumption built into the standard working time framework, that workers have a fixed number of hours available for paid work which can be regulated without reference to their other responsibilities, reflects the male-breadwinner model of employment that feminist labour law scholars have criticized. Women workers in Bangladesh, like women workers everywhere, bear a disproportionate burden of unpaid domestic work and care responsibilities, and the demand for long hours of paid work in the garment factories creates severe tensions between employment and family responsibilities that have significant implications for women's health, family welfare, and gender equality.

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## CHAPTER FOUR: TRADE UNIONS, COLLECTIVE BARGAINING, AND FREEDOM OF ASSOCIATION IN BANGLADESH

### 4.1 The Right to Organize: International Norms and Domestic Reality

Freedom of association and the right to organize are among the most fundamental rights recognized in international labour law. They are enshrined in ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise, 1948) and 98 (Right to Organise and Collective Bargaining, 1949), both of which Bangladesh has ratified. The right to organize is also recognized in Article 38 of the Constitution of Bangladesh, which guarantees the right of citizens to form associations, subject to reasonable restrictions imposed by law.

The formal legal framework for trade unions in Bangladesh is established in Chapters XIII and XIV of the Bangladesh Labour Act, 2006. The Act provides for the registration of trade unions

with the Registrar of Trade Unions, and establishes the procedures for the determination of collective bargaining agents in establishments where multiple unions compete for recognition. The Act also contains provisions on unfair labour practices, prohibiting employers from interfering with the formation or operation of trade unions, from discriminating against workers on the basis of union membership, and from dismissing workers for trade union activities.

These formal protections, however, have been seriously inadequate in practice. The threshold requirement for union formation, which under the original BLA 2006 required that a minimum of thirty percent of the workers in an establishment be members of the union before it could be registered, was identified by the ILO Committee of Experts as a significant obstacle to the right to organize, since it meant that in large factories the absolute number of workers required to form a union was very high. This provision was a consistent target of criticism from the ILO and from labour rights organizations.

The reality of trade union repression in Bangladesh has been extensively documented. Workers who attempt to organize unions in garment factories and other export industries routinely face dismissal, harassment, threats of violence, and, in some cases, criminal prosecution on spurious charges. Factory owners have systematically used the legal process for union registration as an opportunity to identify and dismiss union organizers, and the Registrar of Trade Unions has historically been very slow to process registration applications for unions in the garment sector. The result, as noted in the background research, is that of approximately 10,000 trade unions officially registered in Bangladesh, fewer than 100 are operational in the garment sector, and only about 40 possess collective bargaining authority.

This gap between the formal legal right to organize and the practical reality of systematic suppression is one of the most troubling features of Bangladesh's labour law system. It raises fundamental jurisprudential questions about the relationship between law on the books and law in action, and about the conditions under which formal legal rights can be made substantively effective.

The 2025 amendment introduced significant changes to the threshold requirements for union formation. Under the new provisions, small businesses with up to 300 workers can form a trade union with just 20 members, medium-sized firms with 301 to 500 workers will need at least 40 members, and large enterprises with over 3,000 employees will require 400 members. This represents a fundamental change from the percentage-based threshold to a numerical threshold, which is likely to significantly lower the barrier to union formation, particularly in small and medium-sized enterprises.

The employer community responded to this change with considerable alarm. The Bangladesh Employers' Federation expressed concerns that dramatically lowering the union formation threshold could trigger disorder in factories and undermine the country's competitiveness. These concerns reflect a longstanding employer position that tight restrictions on union formation are necessary to maintain the "flexibility" that Bangladesh's export industries need to remain competitive in global markets. This position, however, conflates the interests of employers with the national interest, and ignores the evidence that collective bargaining and strong worker

representation can contribute to higher productivity, lower turnover, and more stable industrial relations.

### 4.2 The Collective Bargaining Framework: Legal Structure and Systemic Dysfunction

The legal framework for collective bargaining in Bangladesh is established primarily in Chapter XIII of the BLA 2006, which deals with the Collective Bargaining Agent (CBA) and related matters. The Act establishes a system in which the union with the most members in a particular establishment is designated as the CBA, entitled to represent all workers in negotiations with the employer on wages and other terms and conditions of employment.

This system of exclusive representation by a single CBA, modeled partly on the American Wagner Act model, has several significant features and problems in the Bangladeshi context. On the positive side, it creates a clear and definite legal mandate for collective bargaining and establishes a mechanism for determining who speaks for the workers in negotiations with management. On the negative side, the system of exclusive representation can create winner-take-all competition between unions that undermines labor solidarity, allows employers to play competing unions off against each other, and can lead to the capture of the CBA by employer-affiliated unions or politically connected union leaders.

The process for determining the CBA involves a secret ballot election among the workers, and the union that receives the most votes is certified as the CBA for a specified period. In practice, this process has been subject to manipulation, intimidation, and fraud, with employers frequently interfering in elections to ensure the selection of a compliant CBA. The weaknesses of the election process have been documented by numerous researchers and international observers, and they represent a significant impediment to the development of genuinely independent and effective collective bargaining.

Even where genuine collective bargaining does occur, the structural weaknesses of the Bangladeshi collective bargaining system limit its effectiveness in improving wages and working conditions. The fragmentation of the union movement, the short-term nature of the CBA mandate (which is renewable every two years), the lack of dispute resolution mechanisms that can compel employers to bargain in good faith, and the readiness of employers to use lock-outs and dismissals as responses to union demands all contribute to a system in which collective bargaining frequently fails to deliver meaningful improvements for workers.

The theoretical literature on collective bargaining provides useful frameworks for analyzing these problems. The pluralist theory of industrial relations, associated with the work of Allan Flanders and Hugh Clegg, views collective bargaining as a form of joint regulation of the employment relationship that serves the legitimate interests of both workers and employers by establishing clear and predictable rules for the conditions of employment. On this view, the weakness of collective bargaining in Bangladesh represents a failure of industrial governance that is harmful to both workers and to the long-term stability and productivity of the economy.

The radical critique of collective bargaining, advanced from various Marxist and critical perspectives, argues that collective bargaining is inherently constrained by the structural power

of capital, and that even the most effective collective bargaining can only achieve marginal improvements within a system that remains fundamentally oriented toward the extraction of surplus value from workers. From this perspective, the weakness of collective bargaining in Bangladesh is not an accidental institutional failure but a structural feature of a capitalist economic system in which the interests of capital systematically outweigh the interests of labour.

The republican framework advanced by scholars such as Philip Pettit and developed by Alan Bogg in the context of labour law offers a third perspective. For republicans, the problem with the existing collective bargaining system in Bangladesh is not primarily that it is insufficiently redistributive (though it is), but that it fails to provide workers with the collective power they need to protect themselves against the arbitrary interference of employers in their working lives. The development of effective collective bargaining rights is, on this account, a necessary condition for the realization of workers' status as genuinely non-dominated persons.

### 4.3 Anti-Union Discrimination and Unfair Labour Practices: The Gap Between Law and Reality

The Bangladesh Labour Act, 2006 contains provisions prohibiting a range of "unfair labour practices" by both employers and workers. The employer-side unfair labour practices include: interfering with, restraining, or coercing workers in the exercise of their rights to organize and bargain collectively; discriminating against workers in hiring, promotion, or terms of employment on the basis of union membership or activities; dismissing or threatening to dismiss workers for union activities; and interfering with the administration or activities of a trade union.

These provisions appear comprehensive on their face, but their enforcement has been woefully inadequate. Workers who experience anti-union discrimination face significant practical barriers to asserting their legal rights, including the time and cost of litigation, fear of retaliation, lack of access to legal advice and representation, and the difficulty of proving discrimination in the absence of documentary evidence. The Labour Courts, which are the primary forum for adjudicating unfair labour practice complaints, are severely under-resourced and face enormous backlogs, making timely justice effectively impossible for most workers.

The documentary evidence of systematic anti-union discrimination in Bangladesh's garment sector is extensive. Human Rights Watch, Amnesty International, and numerous other organizations have documented cases of workers being dismissed for union organizing activities, physically assaulted by factory security personnel, and subjected to criminal prosecution on fabricated charges. These cases have been reported to the ILO Committee of Experts and to the ILO Committee on Freedom of Association, which has found Bangladesh to be in violation of its obligations under ILO Convention No. 87 on multiple occasions.

The systemic nature of anti-union discrimination in Bangladesh reflects the structural power of employers in a context where workers have few alternative employment opportunities, where the state has historically been complicit in the suppression of labour organizing, and where the competitive pressures of the global garment supply chain create strong incentives for employers to minimize labour costs through the suppression of collective action.

The 2025 amendment introduced additional protections against discrimination, harassment, and blacklisting, including an explicit prohibition on employer blacklisting of workers who have engaged in trade union activities. Blacklisting, the practice of circulating lists of union activists among employers so that they cannot find alternative employment in the industry, has been a particularly pernicious form of anti-union discrimination in Bangladesh. Its explicit prohibition in the amended Act represents a significant advance, though again its practical effectiveness will depend upon enforcement.

### 4.4 Strikes, Lock-Outs, and the Right to Collective Action

The right to strike is, in the view of the ILO's Committee on Freedom of Association and most labour law scholars, an indispensable corollary of the right to organize and the right to collective bargaining. Without the ability to withhold their labour collectively, workers have no effective sanction to support their demands in collective bargaining, and the right to bargain collectively becomes largely meaningless.

The regulation of strikes and lock-outs in Bangladesh has been one of the most contested areas of labour law. The BLA 2006 permits strikes and lock-outs but subjects them to a complex series of procedural requirements and prohibitions. A strike cannot be called without giving fourteen days' notice to the employer and to the Conciliation Officer. A strike is unlawful if it relates to a matter that is the subject of a pending reference to arbitration or to the Labour Court, or if it is called in contravention of the Act's provisions. Strikes in "essential services" are subject to additional restrictions.

In practice, these procedural requirements have created significant legal uncertainty about the legality of strike action, and employers have frequently used the courts to obtain injunctions against strikes on the grounds that they are procedurally defective. The readiness of the courts to grant such injunctions, often on an ex parte basis without hearing the workers' case, has been a major obstacle to effective collective action in Bangladesh.

The concept of "essential services," which is used to justify restrictions on the right to strike, is a significant area of doctrinal controversy. The ILO has recognized that restrictions on the right to strike in essential services may be permissible, but it has insisted that "essential services" must be narrowly defined to cover only those services whose interruption would endanger the life, personal safety, or health of the whole or part of the population. Bangladesh's definition of essential services has historically been interpreted more broadly, encompassing industries such as ports and transportation that may be important to the economy but do not meet the ILO's strict test for essential services.

The pattern of mass worker action in Bangladesh's garment sector, which has periodically erupted in spontaneous and unofficial strike action and street protests, reflects the inadequacy of the formal legal framework for collective action. When workers' wages fall behind the cost of living, when their safety is threatened by crumbling factory buildings or fires, or when employers systematically violate their legal rights, they have no effective legal remedy through the formal dispute resolution mechanisms. The result is periodic eruptions of collective protest that are

technically outside the law but represent the only effective means available to workers for asserting their rights and demands.

The 2024 July Revolution, which brought the interim government of Muhammad Yunus to power in Bangladesh, was partly driven by the frustrations of working people, including garment workers, with the economic conditions and political arrangements that had prevailed under the previous government. The recognition in the November 2024 establishment of the Labour Reform Commission of "workers' roles in past resistance movements" reflects an acknowledgment that the systematic failure of the legal framework to protect workers' rights has contributed to broader political instability.

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## CHAPTER FIVE: OCCUPATIONAL SAFETY AND HEALTH: THE RANA PLAZA LEGACY AND THE CONTINUING CRISIS

### 5.1 The Rana Plaza Disaster: A Watershed Moment

At 8:47 in the morning on 24 April 2013, the Rana Plaza building in Savar, near Dhaka, collapsed, killing at least 1,134 workers and injuring more than 2,500 others. The building housed five garment factories supplying major international brands, and it was the deadliest peacetime industrial disaster in the history of the garment industry worldwide. Rana Plaza became a global symbol of the human cost of the fast-fashion supply chain and a catalyst for significant change in the regulation of occupational safety and health in Bangladesh.

The disaster was not an accident in any meaningful sense of the word. Cracks had appeared in the Rana Plaza building the day before the collapse, and workers had reported these cracks to their supervisors. A bank and several other businesses in the building had evacuated their premises, recognizing the danger. But garment workers were ordered by their managers to return to their workstations or face wage deductions, and factory owners and managers chose production over safety. The building collapsed during the morning shift, trapping thousands of workers under the rubble.

Investigations conducted in the aftermath of Rana Plaza revealed that the building had been constructed without proper permits, that several upper floors had been added illegally without structural assessment, and that the garment factories were operating heavy machinery that created vibrations the building was not designed to withstand. The building's owner, Sohel Rana, had connections to the local ruling party and had used his political connections to obtain construction permits and to prevent any effective government inspection of the building's structural integrity.

The Rana Plaza disaster exposed with devastating clarity the systemic failure of Bangladesh's occupational safety and health regulatory framework: the inadequacy of building inspection, the weakness of factory inspection, the absence of effective mechanisms for workers to raise safety concerns without fear of retaliation, and the complicity of the political system in the maintenance of unsafe working conditions.

The legal and political response to Rana Plaza was significant. In Bangladesh, the government established the National Tripartite Action Plan on Fire Safety and Structural Integrity (NTAPLAN) and made significant amendments to the Bangladesh Labour Act in 2013 to strengthen occupational safety provisions. Internationally, the Accord on Fire and Building Safety in Bangladesh (known as the Bangladesh Accord) was established, bringing together major international brands, global trade unions, and civil society organizations to create an independent safety inspection and remediation program for the Bangladesh RMG sector. A parallel initiative, the Alliance for Bangladesh Worker Safety, was established by North American brands.

The Bangladesh Accord represented an innovative form of transnational private labour regulation, operating outside the formal state regulatory framework but requiring binding commitments from brands and providing remedies for workers through an independent complaints mechanism. The legal status of the Accord, its relationship to national labour law, and its effectiveness as a form of regulation have been the subject of significant academic analysis. The Accord's binding dispute resolution mechanism, which allowed unions and workers to bring complaints against brands that failed to honor their commitments, was a novel form of accountability that went well beyond what the domestic labour law framework provided.

The Accord was subsequently renewed and transformed into the International Accord for Health and Safety in the Textile and Garment Industry (the International Accord), which took effect in 2021 and extended the program beyond Bangladesh to include other garment-producing countries. As of 2024-2025, the International Accord continues to operate in Bangladesh alongside the government's own factory safety monitoring framework.

The Rana Plaza disaster also prompted the introduction of compensation for the victims and their families, through a process facilitated by the ILO. The Rana Plaza Arrangement, a unique compensation fund financed by international brands that sourced from Rana Plaza, was established and ultimately disbursed approximately USD 30 million to the workers and families affected by the disaster. The compensation process, while imperfect, represented an important acknowledgment of the collective responsibility of the global supply chain for the welfare of workers in garment-exporting countries.

### 5.2 The Legal Framework for Occupational Safety and Health: Provisions, Gaps, and the 2025 Reforms

The Bangladesh Labour Act, 2006 contains provisions on health, hygiene, and safety in Chapter VIII, establishing minimum standards for the physical environment of workplaces. These provisions cover matters such as cleanliness, overcrowding, ventilation, lighting, fire prevention, and first aid. They are supplemented by the Occupational Safety, Health and Welfare Rules, 2020, which provide more detailed technical standards for workplace safety.

The enforcement of these provisions is the responsibility of the Department of Inspection for Factories and Establishments (DIFE), which is responsible for inspecting all establishments covered by the Act to ensure compliance with statutory standards. However, DIFE has been chronically under-resourced relative to the scale of its mandate. Before the post-Rana Plaza

reforms, DIFE had fewer than 50 inspectors to cover more than 100,000 registered establishments. The post-Rana Plaza period saw a significant increase in DIFE's resources, including additional inspectors, improved training, and a comprehensive database of registered factories, but the inspectorate remains significantly under-resourced relative to the scale of the task.

The National Action Plan on Fire and Building Safety has made significant progress in improving structural and fire safety conditions in the RMG sector, particularly in factories covered by the Bangladesh Accord and its successor programs. However, serious safety problems persist, particularly in smaller factories and in sectors outside the RMG industry that have not received the same level of international attention.

The 2025 amendment introduced several important changes to the occupational safety and health framework. First, it strengthened the provisions on harassment and violence in the workplace, defining "violence and harassment," "gender-based violence and harassment," and "sexual harassment," and making all forms of workplace violence and harassment legally prohibited and punishable. This is directly connected to Bangladesh's ratification of ILO Convention No. 190 (Violence and Harassment Convention, 2019) on 20 November 2025.

Second, the amendment required each workplace to form a committee to address complaints of discrimination, violence, and harassment. This provision is inspired by the landmark High Court Division judgment in BNWLA v. Government of Bangladesh and Others (2009), which provided mandatory guidelines on defining and addressing sexual harassment at workplaces and educational institutions, and declared that until Parliament enacted legislation, those guidelines would have the force of law. The amendment gives legislative backing to the principles established in that judgment.

Third, the amendment strengthened the provisions on maternity benefits, recognizing the particular vulnerability of pregnant workers and new mothers and the importance of adequate maternity protection for women's economic participation and gender equality.

### 5.3 The Workplace Safety Crisis Beyond the RMG Sector: Invisible Workers and Unregulated Spaces

The international attention focused on workplace safety in the Bangladesh RMG sector following Rana Plaza has created a somewhat distorted picture of occupational safety and health in Bangladesh as a whole. The intense scrutiny of the garment industry, driven by the commercial interests of international brands and the advocacy of global trade unions, has resulted in significant improvements in safety standards in the large, export-oriented garment factories. But the broader occupational safety landscape of Bangladesh, covering agriculture, construction, informal manufacturing, domestic service, and numerous other sectors, remains deeply inadequate.

Construction is one of the most dangerous industries in Bangladesh. The rapid urbanization and infrastructure development of recent decades has created a large and largely informal construction workforce working in dangerous conditions with minimal safety training,

inadequate protective equipment, and no effective labour inspection. Construction workers are predominantly male migrant workers from rural areas, many of them in highly precarious employment arrangements, and they are almost entirely outside the protective framework of the Bangladesh Labour Act.

The brick kiln industry, which employs hundreds of thousands of workers including large numbers of women and children, operates in conditions of extreme physical hazard, including exposure to high temperatures, silica dust, heavy physical labor, and toxic fumes. Brick kiln workers are typically employed through a system of seasonal bonded labour, in which workers receive advance payments at the beginning of the season and are then effectively compelled to remain at the worksite until the advance is repaid. This system, which bears a troubling resemblance to the debt bondage that characterized colonial labour arrangements, operates largely outside the legal framework governing employment and represents a significant human rights concern.

Agricultural workers, who constitute a large proportion of the Bangladeshi labour force despite the declining share of agriculture in GDP, face serious occupational safety hazards including pesticide exposure, heat stress, drowning, and injuries from agricultural machinery. These hazards are largely invisible to the regulatory framework, because agricultural workers are excluded from the coverage of the main occupational safety legislation.

The crisis of occupational safety in the informal economy and in sectors beyond the RMG industry reflects the fundamental limits of a regulatory framework designed for the formal, large-scale industrial sector. Addressing this crisis requires not only stronger regulation and enforcement but also a more fundamental rethinking of the scope and approach of occupational safety and health governance in Bangladesh.

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## CHAPTER SIX: MATERNITY PROTECTION, GENDER EQUALITY, AND THE FEMINIZATION OF LABOUR

### 6.1 Women Workers in the Bangladeshi Economy: A Demographic and Social Profile

The participation of women in the paid labour force has been one of the most significant social transformations of Bangladesh's post-independence history. In 1974, female labour force participation in Bangladesh was estimated at less than 10 percent, confined largely to domestic service and seasonal agricultural work. By 2024, female labour force participation had risen to approximately 40 percent, driven largely by the expansion of the ready-made garments sector, which employs approximately 3.5 million women, representing roughly 80 percent of the RMG workforce.

This dramatic increase in women's economic participation has had profound and complex social consequences. On one hand, women's employment in the garment sector has provided income that has transformed the economic status of millions of women and their families, enabled women's greater participation in social and public life, and is credited with contributing to

significant improvements in indicators of women's education, health, and reproductive autonomy in Bangladesh. Studies have documented positive correlations between women's garment employment and reduced child marriage, increased female education, and improved child health outcomes.

On the other hand, women's employment in the garment sector has been characterized by conditions of acute exploitation and vulnerability. Women workers are concentrated in the lowest-paid, least-skilled job categories in garment factories; they are subjected to sexual harassment and gender-based violence; they are discriminated against in promotion and access to skilled work; their maternity rights are frequently violated; and they are particularly vulnerable to dismissal for trade union activities. The "feminization of labour" in the garment sector is thus a deeply ambivalent phenomenon: it has expanded women's economic opportunities while simultaneously creating new forms of gender-based exploitation and subordination.

The feminist analysis of women's labour in Bangladesh connects to broader theoretical debates in feminist labour law and feminist political economy. The work of scholars such as Diane Elson, Ruth Pearson, and Naila Kabeer has been particularly influential in analyzing the gendered dimensions of export manufacturing in developing countries. These scholars have shown that the expansion of women's employment in export manufacturing is not simply a matter of economic development opening new opportunities to women; it is simultaneously a process through which gender relations are reworked in ways that may challenge some dimensions of women's subordination while reinforcing others.

### 6.2 Maternity Protection in the Bangladesh Labour Act: Legal Provisions and Their Inadequacy

The Bangladesh Labour Act, 2006 contains provisions on maternity benefits in Chapter V. These provisions entitle women workers who have been employed for at least six months to maternity leave of eight weeks before delivery and eight weeks after delivery, and to a maternity benefit equal to the worker's wages for the period of leave. The employer is required to pay the maternity benefit, and refusal or failure to pay is an offence.

The maternity benefit provisions represent a significant protection for women workers, but they are inadequate in several important respects. First, the sixteen-week total period of maternity leave falls below the ILO standard of fourteen weeks established in the Maternity Protection Convention, 2000 (Convention No. 183), and significantly below the eighteen weeks recommended in the accompanying Recommendation. The 2025 amendment has extended the maternity leave period, though the specific provisions require careful examination.

Second, the requirement that the maternity benefit be paid entirely by the employer creates a strong incentive for employers to discriminate against women of childbearing age in hiring, and to dismiss or otherwise disadvantage pregnant workers and those who have recently given birth. The concentration of the cost of maternity protection on the individual employer, rather than distributing this cost across society through a social insurance mechanism, is a structural flaw that undermines both women's equality in the labour market and the effective protection of their maternity rights.

Third, the coverage of the maternity benefit provisions is limited to workers who have been employed for at least six months, which means that workers in short-term or temporary employment, who are disproportionately women, may not be entitled to maternity benefits. This exclusion is particularly significant in the garment sector, where employers frequently use the probationary period and short-term contracts to avoid the obligations of the Act.

Fourth, the maternity benefit provisions do not cover the costs of prenatal and postnatal healthcare, childcare, or other expenses associated with pregnancy and parenthood that are essential to allowing women to maintain their employment after childbirth.

The inadequacy of the maternity protection framework is directly linked to the broader failure of the social security system in Bangladesh. A comprehensive social insurance system that pooled the costs of maternity protection across all employers and provided universal coverage to all workers, including those in informal and short-term employment, would be a far more effective and equitable approach to maternity protection than the current employer-funded system. The development of such a system is a major challenge for labour law reform.

### 6.3 Sexual Harassment and Gender-Based Violence at Work: Legal Responses and Their Limitations

Sexual harassment and gender-based violence in the workplace are pervasive problems in Bangladesh, affecting women workers across all sectors and industries but with particular severity in the garment factories, where the combination of predominantly female workforces, male supervisors and managers, and a culture of impunity has created conditions in which sexual harassment is endemic.

The legal framework for addressing sexual harassment in Bangladesh has been shaped primarily by judicial rather than legislative action. The High Court Division judgment in Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh and Others (2009) was a landmark decision that issued mandatory guidelines on sexual harassment in workplaces and educational institutions. The guidelines required employers to form anti-harassment committees, establish complaint mechanisms, and take disciplinary action against harassment. The Court declared that until Parliament enacted specific legislation, these guidelines would have the force of law.

For more than fifteen years after the BNWLA judgment, the guidelines remained the primary legal instrument for addressing sexual harassment in the workplace, in the absence of specific legislation. The 2025 amendment to the BLA has now given legislative backing to the principles established in that judgment, requiring each workplace to form a committee to address complaints of discrimination, violence, and harassment, and defining sexual harassment as a prohibited form of workplace violence and harassment.

However, the legislative response to sexual harassment remains inadequate in important respects. The definitions adopted in the 2025 amendment need careful analysis to determine whether they are sufficiently broad to capture the full range of conduct that constitutes sexual harassment, including subtle forms of harassment involving hostile work environment creation, not merely

the most egregious forms of sexual assault. The effectiveness of the workplace complaint committees will depend critically upon their composition, independence, and the protection afforded to workers who file complaints against harassment.

The feminist legal theory literature on sexual harassment is directly relevant to this analysis. The foundational work of Catharine MacKinnon, who developed the legal concept of sexual harassment as a form of sex discrimination, argued that sexual harassment in the workplace is not simply a matter of individual misconduct but is a structural feature of gender-unequal power relations in employment. The predominantly male supervisors and managers in Bangladesh's garment factories exercise sexual power over the predominantly female workers not only as individuals but as representatives of a gendered power structure that the law must address at the structural as well as the individual level.

The ratification of ILO Convention No. 190 (Violence and Harassment Convention, 2019) by Bangladesh on 20 November 2025 represents a significant step forward. Convention No. 190 is the first international labour standard to specifically address violence and harassment in the world of work, defining these concepts broadly to include gender-based violence and harassment, and requiring states parties to adopt a legislative framework that addresses violence and harassment in a comprehensive and integrated manner. The implementation of Convention No. 190 in Bangladeshi domestic law will require careful attention to the relationship between the new provisions of the BLA 2025 amendment and the broader legislative and institutional framework.

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## CHAPTER SEVEN: CHILD LABOUR, BONDED LABOUR, AND FORCED LABOUR: PERSISTENT VIOLATIONS OF FUNDAMENTAL RIGHTS

### 7.1 Child Labour in Bangladesh: Scope, Causes, and Legal Framework

Child labour is one of the most serious and persistent human rights problems in Bangladesh. Despite significant progress in reducing the prevalence of child labour over the past three decades, Bangladesh continues to have a substantial child labour problem, particularly in hazardous forms of work that cause physical and psychological harm to children.

The ILO estimates that approximately 3.5 million children in Bangladesh are engaged in child labour, with approximately 1.7 million of these children working in hazardous conditions. Child labour is found across a wide range of sectors, including agriculture, domestic service, the informal manufacturing sector (including small garment workshops and tanneries), transportation, construction, and a variety of service sector activities. The concentration of child labour in hazardous occupations and workplaces represents a serious violation of children's rights under both domestic law and international standards.

The legal framework for addressing child labour in Bangladesh is primarily contained in the Bangladesh Labour Act, 2006 and its predecessors. The Act prohibits the employment of children (defined as persons under 14 years of age) in any establishment. Adolescents (defined as

persons between 14 and 18 years of age) may be employed in certain types of work, but they are prohibited from working in hazardous occupations and from working at night.

Bangladesh has ratified ILO Convention No. 138 (Minimum Age Convention, 1973) and ILO Convention No. 182 (Worst Forms of Child Labour Convention, 1999). Convention No. 138 establishes the principle that the minimum age for admission to employment should not be less than the age of completion of compulsory schooling, and in any case not less than 15 years (with some exceptions for developing countries). Convention No. 182 requires states parties to take immediate and effective measures to eliminate the worst forms of child labour, including all forms of slavery and practices similar to slavery, the use of children for prostitution and other illicit activities, and work that is likely to harm the health, safety, or morals of children.

The enforcement of child labour laws in Bangladesh faces enormous challenges. The informal economy, where most child labour occurs, is largely invisible to the regulatory framework. Employers in the informal sector, including small workshops, domestic employers, and agricultural employers, are rarely subject to labour inspection. Children who work in the home as domestic servants are entirely invisible to the inspection system. The extreme poverty of many Bangladeshi families creates strong economic pressure on families to deploy their children's labour, and the inadequacy of educational provision and social protection means that the alternatives to child labour, particularly school attendance and family income support, are often not realistically available to poor families.

The National Action Plan (NAP) for the elimination of child labour has identified specific time-bound targets and actions, and the ILO has supported the implementation of this plan through a series of technical assistance projects. The ILO's project "Advancing Decent Work in Bangladesh," launched in January 2024, includes a component focused on reducing hazardous child labour. However, the achievement of the goal of eliminating child labour will require sustained investment in education, social protection, and poverty reduction, as well as effective enforcement of child labour laws.

### 7.2 Bonded Labour, Debt Bondage, and the Informal Sector

Bonded labour and debt bondage are prohibited under ILO Convention No. 29 (Forced Labour Convention, 1930) and its Protocol (Protocol of 2014 to the Forced Labour Convention), both of which Bangladesh has ratified. Bonded labour involves the use of debt as a means of coercing a person to work for a particular employer, typically at below-market wages, and the debt is structured in such a way that it can never be repaid, effectively trapping the worker in perpetual servitude.

In Bangladesh, forms of labour closely resembling debt bondage are found in several sectors, including the brick kiln industry, domestic service, and small-scale manufacturing. The practice of advance payment (locally known as dadon) is widely used in the brick kiln industry, where employers advance money to rural families at the beginning of the seasonal work cycle and then require the family to work at the kiln site until the advance is repaid. Since wages are set at levels that make repayment difficult or impossible within a single season, workers may find themselves obligated to return to the same employer year after year.

The legal prohibition on forced labour is established in Article 34 of the Constitution of Bangladesh, which prohibits all forms of forced labour, and in the relevant provisions of the BLA 2006. However, the enforcement of these provisions in the informal sector is extremely weak, and practices that approximate debt bondage continue largely unaddressed by the legal system.

The philosophical analysis of forced labour and bonded labour connects to fundamental questions about freedom, coercion, and the nature of the employment contract. The standard economic analysis treats all voluntary employment arrangements as instances of free contract, and therefore as presumptively legitimate. But the concept of "voluntary" choice is deeply problematic when the alternative to accepting exploitative employment conditions is destitution. Robert Hale's classic analysis of coercion in contract, which argued that all market exchanges involve some degree of coercion because they occur in a background of property rights that constrain the choices available to poorer parties, is particularly relevant to the analysis of bonded labour in Bangladesh. The "voluntary" choice of a poor family to accept a dadon advance and work in a brick kiln is a choice made under conditions of extreme economic pressure that fundamentally limits the voluntariness of the decision.

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## CHAPTER EIGHT: THE EXPORT PROCESSING ZONES AND THE POLITICS OF LABOUR EXCEPTIONALISM

### 8.1 The EPZ Model and Its Labour Regime

Export Processing Zones (EPZs) are geographically demarcated industrial areas in which special economic and regulatory conditions apply, typically including tax incentives, relaxed customs procedures, and specific labour relations regimes, designed to attract foreign investment and promote export manufacturing. Bangladesh established its first EPZ in Chittagong in 1983, and the EPZ model has since expanded to include eight EPZs across the country, administered by the Bangladesh Export Processing Zones Authority (BEPZA).

The labour relations regime in Bangladesh's EPZs has historically been a major point of contention between the government, international labour organizations, and trade union advocates. The original EPZ framework prohibited trade unions and collective bargaining within the EPZs, on the grounds that industrial peace was essential to maintaining the investment climate in these zones. This prohibition was a clear violation of ILO Convention No. 87 on freedom of association, and it drew sustained criticism from the ILO's supervisory bodies.

In response to international pressure, Bangladesh introduced a series of legislative changes over the years. The Export Processing Zones Workers Associations and Industrial Relations Act, 2004, permitted the formation of "Workers' Welfare Associations" (WWAs) in the EPZs in place of trade unions, but WWAs were subject to significant restrictions that limited their ability to function as genuine collective bargaining agents. The right to strike was severely restricted within the EPZs, and the enforcement of labour standards by the BEPZA inspectorate was

widely regarded as more favorable to employers than the DIFE inspectorate's enforcement in the rest of the country.

The EPZ Labour Act, 2019, which replaced the 2004 Act, made some improvements to the collective labour rights framework within the EPZs, but significant gaps remained relative to the general labour law framework and to international standards. The 2025 reforms have included provisions aimed at aligning the EPZ labour relations regime more closely with the general labour law framework and with ILO standards, though the specific details of these reforms require careful analysis.

### 8.2 The Political Economy of Labour Exceptionalism

The maintenance of a distinct and generally less protective labour relations regime in the EPZs reflects the political economy of export-led development strategy in Bangladesh. The EPZ model is premised on the idea that Bangladesh must offer better conditions for foreign investors than competing countries in order to attract investment and generate export earnings and employment. The special labour relations regime in the EPZs is presented as a necessary accommodation to the preferences of foreign investors for labour markets unconstrained by collective bargaining and strike action.

This argument has been powerfully critiqued from multiple perspectives. First, the empirical evidence that labour exceptionalism in EPZs is actually necessary to attract foreign investment is contested. Many countries have attracted significant foreign investment without exempting EPZs from general labour standards, and there is evidence that investors are concerned at least as much about infrastructure, political stability, and the quality of the workforce as they are about the absence of trade unions.

Second, the argument rests upon a "race to the bottom" logic in which countries compete to offer the most exploitative conditions to international capital, resulting in a global lowering of labour standards. This logic is both empirically questionable and normatively objectionable, because it treats the welfare of workers as a legitimate instrument of national competitiveness rather than as an end in itself.

Third, the maintenance of different standards of labour rights in EPZs and outside them is corrosive of the rule of law and of the constitutional principle of equal treatment, since it creates a situation in which the fundamental rights of workers depend upon their geographical location rather than their status as human beings entitled to equal protection.

The jurisprudential dimension of this critique connects to the concept of "legal pluralism," the idea that different legal regimes may apply simultaneously in the same state to different categories of persons or activities. While legal pluralism in some forms may be acceptable and even desirable, the specific form of legal pluralism that applies less protective labour standards to workers in EPZs appears to be a form that serves the interests of capital at the expense of workers' human rights.

# CHAPTER NINE: LABOUR DISPUTE RESOLUTION: INSTITUTIONS, PROCESS, AND CRISIS

## 9.1 The Architecture of Labour Dispute Resolution

The resolution of disputes between employers and workers is one of the most important functions of any labour law system, and the institutions and processes through which this function is performed have enormous practical consequences for the welfare of workers and the stability of industrial relations. The Bangladesh Labour Act, 2006 establishes a multi-tiered system of labour dispute resolution that includes conciliation, arbitration, and adjudication by the Labour Courts.

The first tier of the dispute resolution system is conciliation, which is a process in which a government Conciliation Officer attempts to bring the parties to a dispute to a mutually agreed settlement. Conciliation is mandatory before a dispute can proceed to arbitration or to the Labour Court, and the conciliation process typically involves a series of meetings between the parties facilitated by the Conciliation Officer. The conciliation system is designed to encourage settlement of disputes at an early stage and to avoid the delay and expense of formal legal proceedings.

The second tier is arbitration, which may be resorted to if conciliation fails and both parties agree. The arbitration process involves the submission of the dispute to an independent arbitrator or panel of arbitrators, whose decision is binding on the parties. In practice, arbitration is relatively rarely used in Bangladesh, because one party or the other typically refuses to agree to arbitration, which then triggers the right to strike or lock-out.

The third tier is adjudication by the Labour Courts, which are established under Section 214 of the BLA 2006. Labour Courts have jurisdiction to adjudicate disputes relating to the dismissal or discharge of workers, unfair labour practices, and other matters specified in the Act. The Labour Courts are specialized tribunals staffed by district judges, and they have both original and appellate jurisdiction in labour matters.

Above the Labour Courts is the Labour Appellate Tribunal, which hears appeals from Labour Court decisions. Further appeal lies to the High Court Division and, in appropriate cases, to the Appellate Division of the Supreme Court of Bangladesh.

## 9.2 The Crisis of Labour Court Justice: Delay, Inaccessibility, and Systemic Failure

The labour dispute resolution system in Bangladesh faces a severe and well-documented crisis of delay, inaccessibility, and systemic failure that effectively denies justice to the vast majority of workers who attempt to assert their legal rights. This crisis has multiple dimensions.

First, there is the problem of judicial delay. The Labour Courts are severely understaffed and face enormous backlogs of pending cases. A worker who files a case in the Labour Court for wrongful dismissal or unfair labour practices may wait years for a decision, and even then the decision may be appealed by the employer, resulting in further years of delay. In a context where

workers typically cannot afford to be unemployed for extended periods and lack the resources to sustain prolonged litigation, judicial delay effectively denies access to justice and creates strong incentives for workers to accept inadequate settlements rather than pursue their legal rights.

The Bangladesh Labour Market Profile 2024/2025 notes that "the courts have been under tremendous pressure" and that "the conventional legal process for resolving labour disputes suffers from delays, backlogs, and a lack of familiarity with the complexities of labour issues, not to mention an insufficient number of judges." This assessment accurately describes a system that has been chronically under-resourced and unable to meet the demand for its services.

Second, there is the problem of legal costs and inaccessibility. The Labour Courts require parties to engage lawyers and to meet the costs of litigation, which are prohibitive for most workers. Legal aid schemes for workers in Bangladesh are extremely limited in coverage and resources, and the practical reality is that most workers who have been wronged by their employers cannot afford to pursue their legal rights through the formal court system.

Third, there is the problem of enforcement. Even when a worker obtains a judgment from the Labour Court, enforcing that judgment against a recalcitrant employer is frequently extremely difficult. The enforcement mechanisms available to the Labour Courts are limited, and employers with political connections or access to resources can delay and obstruct enforcement indefinitely.

The 2025 amendment introduces provisions for alternative dispute resolution (ADR) mechanisms, including negotiation, mediation, and arbitration, and provides for the establishment of independent dispute resolution centers. This is a potentially significant development that could help to address the systemic problems of the Labour Court system, but its effectiveness will depend upon the quality of the ADR institutions, the independence of the mediators and arbitrators, and the enforceability of ADR outcomes.

### 9.3 The Labour Courts and Constitutional Justice: The Role of the Superior Courts

The superior courts of Bangladesh, particularly the High Court Division of the Supreme Court, have played an important role in the development of labour law through their exercise of constitutional review and supervisory jurisdiction. The High Court Division's writ jurisdiction under Article 102 of the Constitution allows it to review and quash decisions of administrative bodies and lower courts that violate fundamental rights or exceed the legal authority of the decision-maker.

Workers and unions have used the writ jurisdiction to challenge unlawful dismissals, to contest the registration decisions of the Registrar of Trade Unions, and to seek protection against anti-union discrimination. The High Court Division has also, in appropriate cases, issued public interest litigation (PIL) decisions that have had systemic significance for the protection of workers' rights. The BNWLA judgment on sexual harassment, discussed above, is an example of this kind of systemic judicial intervention.

However, access to the superior courts is, in practice, even more limited for workers than access to the Labour Courts. The cost and complexity of High Court litigation puts it effectively beyond the reach of most workers, and the superior courts' workload means that even cases that are filed may take years to be decided.

The role of the superior courts in labour law raises broader jurisprudential questions about the relationship between judicial decision-making and democratic politics in the development of labour standards. The judicial creation of legal rules through constitutional interpretation, as in the BNWLA judgment, can be an important mechanism for the protection of rights that democratic majorities have failed to protect through legislation. But it also raises concerns about judicial legitimacy and the appropriate role of unelected courts in making policy choices that affect the distribution of power and resources in society.

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## CHAPTER TEN: WORKERS' PROFIT PARTICIPATION, SOCIAL SECURITY, AND THE WELFARE STATE DEFICIT

### 10.1 The Workers' Profit Participation Fund: Architecture and Analysis

The Bangladesh Labour Act, 2006 requires employers of establishments with net profits to contribute five percent of their net profit before tax to a Workers' Profit Participation Fund (WPPF). The WPPF is divided equally between a Workers' Profit Participation Fund, from which workers receive direct payments, and a Workers' Welfare Fund, which is used for the collective welfare of the workforce including housing, education, and recreation. The WPPF scheme is mandatory for all covered establishments that earn a net profit, and failure to comply is a criminal offence.

The WPPF represents an attempt to give workers a direct stake in the profitability of their employers, based on the principle that workers contribute to the creation of profit and should therefore share in its distribution. This principle has deep roots in the history of social and economic thought, drawing upon traditions ranging from classical liberal economics to socialist and syndicalist ideas about worker participation in enterprise governance.

In practice, the WPPF scheme faces significant implementation challenges. Many employers underreport profits or structure their accounts to minimize the apparent profit subject to WPPF contributions. The administrative mechanisms for verifying employer compliance and distributing WPPF payments to workers are weak, and many workers never receive the payments to which they are entitled. The WPPF scheme also does not benefit workers in enterprises that do not earn a profit, which includes many small and medium-sized enterprises, leaving the workers who are often most vulnerable outside the scheme's protection.

The jurisprudential analysis of the WPPF raises interesting questions about the nature of workers' rights in enterprise profits. Is the WPPF a form of deferred wages, a share of the surplus value created by workers' labour? Is it a form of collective property right, analogous to the equity held by shareholders? Or is it a form of regulatory redistribution, a mechanism through which the

state compels the sharing of economic gains? These questions connect to broader theoretical debates about the nature of property, the legitimacy of profit, and the relationship between capital and labour in a market economy.

### 10.2 Social Security: The Absent Welfare State

Social security, understood as a system of public or collectively funded benefits that protect workers and citizens against the economic risks of unemployment, illness, disability, old age, and family responsibilities, is a fundamental element of the modern welfare state and a key component of international labour standards. ILO Convention No. 102 (Social Security (Minimum Standards) Convention, 1952) establishes minimum standards for the principal branches of social security, and the ILO's Social Protection Floors Recommendation, 2012 (Recommendation No. 202) calls for the establishment of national social protection floors that guarantee access to essential health care and basic income security for all.

Bangladesh has a very limited social security system relative to the scale of the need and the size of the workforce. The formal social security system covers only a small fraction of workers, primarily those employed in large formal sector establishments. The primary formal social security provisions in the employment context are the Workers' Profit Participation Fund (discussed above), the compulsory group insurance scheme required for establishments with 100 or more permanent workers, and the gratuity scheme which provides a lump-sum payment to workers on retirement or retrenchment.

The government has developed a number of social protection programs targeting the poor and vulnerable, including old age allowances, widow's allowances, disability benefits, and various food security programs. However, these programs are funded by general tax revenues rather than contributory social insurance, are means-tested and therefore targeted at only the poorest section of the population, and are subject to significant coverage gaps, administrative inefficiencies, and political manipulation.

The absence of universal unemployment insurance is a particularly significant gap in Bangladesh's social protection framework. Workers who lose their employment, whether through dismissal, retrenchment, or the closure of the enterprise that employed them, have no entitlement to unemployment benefits and are immediately dependent upon their savings, if any, and upon family support. The lack of unemployment insurance creates extreme economic insecurity for workers and their families, and it also strengthens the structural power of employers by increasing the cost of job loss to workers and therefore their vulnerability to employer threats of dismissal.

The Universal Pension Scheme introduced by the Bangladesh government in 2023 represents a significant step toward expanding social protection coverage, but it has a voluntary participation model that may limit its reach among the poorest and most vulnerable workers, who face the greatest barriers to participation.

The development of a comprehensive and universal social security system in Bangladesh is one of the most important challenges of labour law reform, and it connects to the broader question of

the kind of welfare state that Bangladesh can and should aspire to build. The international human rights framework, including the ICESCR's guarantee of the right to social security, provides normative guidance. The experience of middle-income countries that have developed effective social protection systems, including within the region, provides practical models. And the fiscal capacity of the Bangladeshi state, while constrained, is sufficient to support a more ambitious social protection program than currently exists, particularly if effective measures are taken to improve tax compliance and reduce tax evasion by the business community.

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## CHAPTER ELEVEN: THE JULY REVOLUTION OF 2024 AND THE LABOUR REFORM COMMISSION: A HISTORIC CONJUNCTURE

### 11.1 The July Revolution: Political Context and Labour Dimensions

The political upheaval that Bangladesh experienced in July and August 2024, which has come to be known as the "July Revolution," brought an end to the fifteen-year rule of Prime Minister Sheikh Hasina and the Awami League government, and led to the formation of an interim government headed by Nobel Peace Prize laureate Muhammad Yunus. The revolution was primarily driven by a mass movement of students and young people who rose against what they perceived as an authoritarian and corrupt government, but it also had significant labour dimensions.

Workers, particularly in the garment sector, had accumulated a long list of grievances against the Awami League government: the failure to ensure adequate enforcement of labour standards, the government's readiness to use police force against striking workers, the inadequacy of the minimum wage setting process, and the broader economic conditions that had left millions of workers in conditions of poverty and precarity. While the July Revolution was not primarily a labour uprising, the participation and sympathy of workers was a significant element of the mass movement.

The formation of the Labour Reform Commission by the interim government in November 2024 was a recognition of the importance of labour rights reform as part of the broader project of building a "new Bangladesh" on more democratic and equitable foundations. The Commission's mandate was to formulate necessary reform proposals to protect labour rights and ensure the welfare of all working people, and in April 2025 it submitted a detailed report titled "The Transformation Framework of the World of Work: Workers' Rights, Harmonized Industrial Relations and Inclusive Development."

The Commission's report and the subsequent legislative reforms of November 2025 represent the most significant developments in Bangladeshi labour law since the enactment of the BLA 2006, and they have been widely characterized as a historic advance for workers' rights. However, the adequacy of the reforms and the challenges of implementation remain matters of intense debate.

### 11.2 The Labour Reform Commission's Report: Key Findings and Recommendations

While the full text of the Labour Reform Commission's report requires detailed analysis, the available information about the 2025 amendment that was enacted following the report allows us to identify the key areas in which the Commission recommended significant changes.

The first major area is the reform of the trade union framework. The Commission recommended, and the amendment enacted, significant changes to the threshold requirements for union formation, replacing the percentage-based threshold with numerical thresholds that lower the barrier to union organization, particularly for workers in smaller enterprises.

The second major area is the expansion of the definition of "worker" to include domestic workers and seafarers. This change is particularly significant for the approximately 2 to 3 million domestic workers in Bangladesh, predominantly women, who have historically been entirely outside the protective framework of labour law.

The third major area is the strengthening of protections against workplace violence and harassment, including the introduction of explicit definitions and prohibitions of sexual harassment and gender-based violence in the workplace, aligned with ILO Convention No. 190.

The fourth major area is the improvement of maternity benefit provisions, extending the protection available to pregnant workers and new mothers.

The fifth major area is the prohibition of blacklisting, which has been a significant tool of anti-union discrimination in the RMG sector.

The sixth major area is the introduction of alternative dispute resolution mechanisms, which are intended to provide workers with more accessible and timely means of resolving disputes with their employers.

These are significant advances, and the advocacy community and labour rights organizations that have campaigned for these changes over many years deserve recognition for their persistent work. However, the 2025 amendment also leaves significant areas of Bangladeshi labour law unaddressed, and there are legitimate concerns about whether the political will exists to ensure effective implementation of the new provisions.

### 11.3 The Challenges of Implementation: From Law in Books to Law in Action

The history of labour law reform in Bangladesh is, in large part, a history of the gap between the law as written and the law as enforced. Bangladesh has repeatedly enacted legislative reforms that, on paper, provide significant protections for workers, only for those protections to be undermined by weak enforcement, inadequate resources, political interference, and the structural power of employers. The 2025 amendment will follow the same trajectory unless serious attention is paid to the implementation challenges.

The most fundamental challenge is the resource and capacity of the enforcement apparatus. The Department of Inspection for Factories and Establishments (DIFE) remains significantly under-resourced relative to the scale of its mandate. Without a dramatic increase in the number and

quality of labour inspectors, adequate funding for inspection activities, and modern information technology systems for monitoring compliance, the new provisions of the amended Act will remain largely unenforced in practice.

The second major challenge is corruption and political interference. Labour inspection in Bangladesh has historically been characterized by significant corruption, with inspectors accepting bribes from employers to overlook violations, and with political pressure being applied to prevent or limit enforcement action against politically connected employers. The structural conditions that enable corruption, including low inspector salaries, inadequate supervision, and the broad discretion available to individual inspectors, must be addressed if the inspection system is to function effectively.

The third challenge is access to justice for workers who wish to assert their rights under the new provisions. The Labour Court system's backlog and inaccessibility mean that workers who experience violations of the new provisions will face enormous practical obstacles to obtaining legal redress. The alternative dispute resolution mechanisms introduced by the 2025 amendment have the potential to address some of these obstacles, but only if they are designed and implemented in a way that is genuinely accessible to, and independent of, employer pressure.

The fourth challenge is the organization and capacity of workers' organizations. Effective enforcement of labour standards requires not only a functioning state enforcement apparatus but also organized workers capable of identifying violations, asserting their rights, and holding both employers and inspectors accountable. The fragmentation and weakness of the trade union movement in Bangladesh, which is a product of both the restrictive legal framework and the political practices of successive governments, limits the capacity of workers to play this essential role.

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## CHAPTER TWELVE: INTERNATIONAL LABOUR STANDARDS, ILO MEMBERSHIP, AND BANGLADESHI COMPLIANCE

### 12.1 Bangladesh's Relationship with the ILO: History and Obligations

Bangladesh became a member of the International Labour Organization in 1972, as one of the first acts of international recognition of the new state. ILO membership brings with it both the right to participate in the global system of labour standards development and the obligation to observe and implement the standards that Bangladesh has accepted through ratification of ILO Conventions.

As of 2025, Bangladesh has ratified 39 ILO Conventions, including all 10 of the fundamental conventions that the ILO identifies as covering the most basic rights at work. The fundamental conventions cover freedom of association and collective bargaining (Conventions Nos. 87 and 98), the elimination of forced and compulsory labour (Conventions Nos. 29 and 105), the abolition of child labour (Conventions Nos. 138 and 182), and the elimination of discrimination in employment (Conventions Nos. 100 and 111), as well as the two recently added fundamental

conventions on occupational safety and health (Convention No. 155) and on the promotional framework for occupational safety and health (Convention No. 187).

The ratification of all fundamental conventions is an important symbolic and legal commitment, but the gap between ratification and implementation has been a persistent problem in Bangladesh's relationship with the ILO. The ILO's supervisory machinery, which includes the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association, has repeatedly identified areas in which Bangladeshi law and practice fall short of the obligations undertaken through ratification.

The ILO's concerns have been particularly focused on three areas. First, freedom of association and the right to organize (Convention No. 87), where the Committee of Experts has noted the excessive thresholds for union formation, the inadequate protections against anti-union discrimination, and the restrictions on trade union rights in the EPZs. Second, the right to organize and collective bargaining (Convention No. 98), where concerns have been raised about the inadequacy of protections against anti-union discrimination and the failure to ensure genuine collective bargaining in practice. Third, labor inspection (Convention No. 81), where concerns have been raised about the adequacy of DIFE's resources and the effectiveness of inspection in ensuring compliance with labour standards.

The ILO Governing Body's decision in 2021 to request that Bangladesh submit a legal and institutional reform roadmap (2021-2026) reflected the seriousness of the concerns about Bangladesh's compliance with its international obligations. The National Action Plan (NAP) developed in response to this request has provided a framework for systematic reform, and the 2025 amendment represents a significant installment on the commitments made in that plan.

### 12.2 The European Union's GSP Framework and Trade Conditionality

The European Union's Generalised System of Preferences (GSP) program provides preferential market access for exports from developing countries, and Bangladesh is one of the major beneficiaries of the program's "Everything but Arms" (EBA) arrangement, which provides duty-free and quota-free access for all products from least developed countries. Bangladesh's garment exports benefit enormously from this preferential access, and the threat of withdrawal or suspension of GSP benefits has been an important lever for international pressure on Bangladesh to improve its labour standards.

The EU has made it clear that the continuation of Bangladesh's preferential trade access is conditional upon compliance with relevant international conventions, including the core ILO conventions on labour rights. The EU has conducted monitoring of Bangladesh's compliance with these standards and has, at various points, threatened formal investigations or action under the GSP sustainability clause. The prospect of losing GSP benefits, which would significantly increase the cost of Bangladeshi garment exports to the EU market, has been a powerful motivation for the Bangladeshi government to engage with ILO reform requirements.

Bangladesh's status as a Least Developed Country is scheduled to change as the country graduates from LDC status, which will reduce the preferential access it currently enjoys. This

LDC graduation has significant implications for the trade policy dimension of labour standards, as Bangladesh will need to negotiate continued preferential access arrangements with the EU and other trading partners that are likely to include labour standards conditionality.

The relationship between trade policy and labour standards raises important jurisprudential and political questions. On one hand, trade conditionality can be an effective instrument for promoting labour standards improvement in countries where domestic political dynamics have been insufficient to drive reform. On the other hand, the use of trade policy to impose labour standards on developing countries has been criticized as a form of disguised protectionism and as an exercise of economic power by wealthy countries over poor countries that is inconsistent with principles of sovereignty and self-determination.

The analysis of trade conditionality in the Bangladesh context must navigate between these competing considerations. The improvements in Bangladeshi labour law that have occurred in part as a result of international trade pressure are genuinely beneficial for Bangladeshi workers, regardless of the motivations of the trading partners who imposed the pressure. At the same time, the structural conditions that create extreme worker vulnerability in Bangladesh are partly the product of the global economic system, including the dynamics of the fast-fashion supply chain, that benefits the wealthy consumer markets of Europe and North America. A truly principled international approach to labour standards would address the responsibilities of brands, buyers, and consuming-country governments, not merely the obligations of producing-country governments.

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## CHAPTER THIRTEEN: POSTCOLONIAL THEORY, LEGAL TRANSPLANTATION, AND THE CRITIQUE OF BANGLADESHI LABOUR LAW

### 13.1 The Colonial Legal Heritage: Transplantation, Adaptation, and Resistance

The postcolonial critique of Bangladeshi labour law begins with the observation that the foundational architecture of the law is a transplant from a colonial legal system designed not to protect Bangladeshi workers but to manage the labour force of a colonial economy. The legal categories, institutions, and doctrines that constitute Bangladeshi labour law were developed primarily in Britain and applied to colonial India in modified form. They were not the product of the autonomous deliberation of the Bangladeshi people about how they wished to organize the conditions of their labour; they were imposed by a colonial power in the service of colonial interests.

This colonial origin continues to shape Bangladeshi labour law in ways that are not always obvious. The concept of the employment contract, which is the foundational legal category of the field, is a category developed in the context of English commercial law and reflecting the individualist assumptions of English liberal jurisprudence. The concept of the trade union, which is the foundational category of collective labour relations, is a concept developed in the context of the British industrial revolution and reflecting the particular forms of worker organization that emerged in that context. The concept of the Labour Court, which is the primary institution for the

resolution of labour disputes, is modeled on the industrial tribunals of the British Donovan Commission era and assumes a level of legal formalization and institutional capacity that is not straightforwardly applicable to the Bangladeshi context.

Upendra Baxi's concept of the "suffering of law" is relevant here. Baxi argues that the laws of postcolonial societies are often experienced by the poorest and most marginalized people not as protection but as a form of violence, as an alien and incomprehensible system that serves the interests of the powerful. The labour law of Bangladesh, for the millions of workers who are unable to access it or who are actively harmed by its enforcement, is often experienced in precisely this way.

The challenge for legal reform in postcolonial societies is not simply to improve the existing legal framework but to engage critically with its colonial foundations and to ask whether genuinely indigenous legal forms and institutions might serve the needs of Bangladeshi workers better than the inherited colonial legal architecture. This is a profound and difficult question, and there are no simple answers. But the postcolonial theoretical tradition insists that it is a question that must be asked.

### 13.2 The Question of Legal Consciousness Among Bangladeshi Workers

The concept of "legal consciousness," which has been developed in the sociology of law literature to describe the ways in which ordinary people understand, experience, and engage with law, is particularly relevant to the analysis of labour law in Bangladesh. The effectiveness of legal protections for workers depends not only on the formal content of the law and the capacity of enforcement institutions but also on the extent to which workers know and understand their legal rights and feel able and empowered to assert them.

Research on legal consciousness in the Bangladesh garment sector has consistently found that workers have very limited knowledge of their legal rights, and that the fear of retaliation prevents most workers from attempting to assert the rights they do know about. Workers know that they are entitled to wages, to some form of leave, and to some form of compensation for injury; but they typically do not know the specific legal provisions governing these entitlements, and they do not know how to access the legal system to enforce them.

The legal consciousness literature, drawing on the theoretical work of Patricia Ewick and Susan Silbey, distinguishes between different modes of legal consciousness: "before the law" (deferential acceptance of legal authority), "with the law" (strategic use of law as a resource), and "against the law" (resistance to and circumvention of legal authority). In the Bangladesh garment sector, worker legal consciousness tends to be characterized predominantly by the "before the law" mode of deference, combined with a form of cynical "against the law" resistance in which workers and employers alike treat the formal legal framework as largely irrelevant to the actual conduct of their relationship.

The development of a more empowered and critical legal consciousness among Bangladeshi workers is a necessary complement to legislative reform. Workers who do not know their rights cannot assert them; workers who know their rights but fear to assert them need the collective

support of effective unions and the credible protection of anti-retaliation provisions; workers who assert their rights need accessible and timely dispute resolution mechanisms. Legal education, union capacity building, and institutional reform are all necessary elements of a comprehensive strategy to make labour law meaningful for Bangladeshi workers.

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## CHAPTER FOURTEEN: THE POLITICAL ECONOMY OF LABOUR LAW REFORM IN BANGLADESH: ACTORS, INTERESTS, AND POWER

### 14.1 The State as Regulator, Arbitrator, and Interested Party

The Bangladesh state plays a complex and sometimes contradictory role in the regulation of labour relations. On one hand, the state is the formal regulator, responsible for enacting, administering, and enforcing labour law. On the other hand, the state has direct economic interests in the labour market as one of the largest employers (through state-owned enterprises and the public sector) and as the entity responsible for creating conditions that attract foreign investment and generate export earnings. These different roles create tensions and contradictions in the state's approach to labour regulation.

The Bangladesh state has historically been characterized by a close relationship between political power and economic power, in which political connections have been essential for business success and in which powerful business interests have exercised significant influence over the regulatory process. This relationship has been extensively documented in the political science and development economics literature on Bangladesh, and it has profound implications for the design and implementation of labour law.

The garment industry, in particular, has maintained very close relationships with successive Bangladeshi governments. Many members of parliament and government ministers have been garment manufacturers, creating direct conflicts of interest in the legislative and regulatory processes. The BGMEA has been one of the most powerful lobbying organizations in Bangladesh, able to shape the content of labour legislation, influence the appointment of key regulatory officials, and mobilize political support against enforcement actions that threaten its members.

The interim government of Muhammad Yunus, which came to power following the July Revolution of 2024, has positioned itself as committed to a different relationship between the state and business, oriented toward rule of law, transparency, and the protection of workers' rights. The formation of the Labour Reform Commission and the enactment of the 2025 amendment reflect this commitment. However, the structural conditions that have historically allowed business interests to dominate the regulatory process have not been fundamentally altered by the change of government, and the long-term trajectory of labour law reform will depend on whether these structural conditions can be changed.

### 14.2 The Trade Union Movement: Fragmentation, Politicization, and Potential

The trade union movement in Bangladesh is characterized by extreme fragmentation and intense politicization. The hundreds of registered trade union federations are affiliated with political parties and reflect the political divisions of Bangladeshi society, including the major divide between the Awami League and the Bangladesh Nationalist Party (BNP), as well as various left and Islamist political tendencies.

This politicization of the trade union movement has had several adverse consequences for the protection of workers' rights. First, it has prevented the development of a unified and independent trade union movement capable of advocating effectively for workers' interests regardless of which political party is in power. When the party with which a union is affiliated is in government, the union may be reluctant to criticize the government's labour policies; when the opposition party is in government, the union may be used as a tool of political opposition rather than as an instrument for advancing workers' specific economic interests.

Second, the fragmentation of the union movement into hundreds of small political affiliates has prevented the development of the organizational capacity necessary for effective collective bargaining and political advocacy. Many registered unions are essentially paper organizations with no active membership, no financial resources, and no capacity to negotiate with employers or to represent workers in disputes. The statistic that fewer than 100 of approximately 10,000 registered unions are operational in the garment sector is a stark indicator of this organizational weakness.

Third, the politicization of the union movement has created opportunities for employer manipulation. Employers who wish to prevent the formation of an independent union at their factory have historically been able to sponsor the formation of a politically affiliated union that will be compliant with management and will prevent independent organizing. The phenomenon of "yellow unions," employer-controlled unions formed to preempt genuine worker organization, has been widely documented in the Bangladesh garment sector.

The potential for a more effective and independent trade union movement in Bangladesh is not negligible. There are examples of effective local union organizing in the garment sector, and the campaigns of organizations such as the Bangladesh Center for Workers' Solidarity have demonstrated that it is possible to build genuine worker organization even in the face of intense employer opposition. The 2025 amendment's changes to the threshold requirements for union formation have the potential to create more space for genuine worker organizing, if they are effectively implemented and if workers are protected against retaliation for organizing activities.

### 14.3 Civil Society, NGOs, and the Labour Rights Movement

A distinctive feature of the Bangladeshi labour rights landscape is the significant role played by non-governmental organizations and civil society organizations, both domestic and international, in advocating for workers' rights and documenting labour violations. Organizations such as the Bangladesh Center for Workers' Solidarity (BCWS), Karmojibi Nari, the Bangladesh Institute of Labour Studies (BILS), and numerous others have provided legal aid to workers, conducted research on labour conditions, organized worker education programs, and engaged in advocacy for legislative reform.

International NGOs such as Human Rights Watch, Amnesty International, the Clean Clothes Campaign, and the Worker Rights Consortium have documented labour violations in Bangladesh's garment sector and have campaigned for improvements through advocacy with brands, governments, and international organizations. This international civil society engagement has been an important driver of the pressure for labour law reform in Bangladesh, though it has also raised questions about the relationship between international advocacy and Bangladeshi workers' agency and self-determination.

The feminist NGOs and women's rights organizations in Bangladesh have played a particularly important role in advocating for the rights of women workers, including campaigning for stronger maternity protection, better protection against sexual harassment, and recognition of domestic workers' rights. The BNWLA's public interest litigation that resulted in the 2009 landmark judgment on sexual harassment is an example of the transformative potential of strategic litigation by civil society organizations.

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## CHAPTER FIFTEEN: RECENT REFORMS IN THEORETICAL AND COMPARATIVE PERSPECTIVE

### 15.1 The 2025 Amendment as a Moment of Transformative Potential

The Bangladesh Labour (Amendment) Ordinance 2025, promulgated on 17 November 2025, represents the most significant amendment to the Bangladesh Labour Act since its original enactment in 2006. As described in the preceding chapters, the amendment introduces changes in multiple areas of labour law: trade union formation thresholds, the definition of "worker," maternity protection, prohibition of workplace harassment, alternative dispute resolution, and the ban on blacklisting.

The significance of this amendment must be assessed not only in terms of its specific provisions but also in terms of its symbolic and political dimensions. The amendment represents the first major labour law reform enacted by a post-revolutionary government committed to building a "new Bangladesh" on more democratic and equitable foundations. It draws upon the recommendations of a Labour Reform Commission that was itself an expression of the new government's commitment to genuine tripartism and to the protection of workers' rights. And it has been enacted in the context of Bangladesh's ratification of several important ILO Conventions, including Convention No. 190 on violence and harassment in the world of work.

The amendment has been widely welcomed by labour rights advocates, who have described it as a historic advance. Kalpona Akter, one of Bangladesh's most prominent labour rights activists, has characterized the recent developments regarding labour laws and conventions as historic, noting that advocacy and campaigns for these changes had been ongoing for many years. The ratification of important ILO conventions, including those on health, safety, and compensation for employment injuries, reflects the persistent efforts of the labour movement.

At the same time, important caveats must be registered. The amendment does not address all of the significant deficiencies in Bangladesh's labour law framework. The minimum wage setting process remains problematic. The enforcement apparatus remains under-resourced. The labour dispute resolution system remains crisis-ridden. Agricultural workers, informal workers, and many categories of non-standard workers remain outside the protective framework of the Act. The EPZ labour relations regime remains distinct from the general framework. And the structural conditions of employer power and worker vulnerability that have historically enabled the systematic violation of even the clearest legal rights have not been altered by legislative amendment alone.

## 15.2 Comparative Lessons: Labour Law Reform in Developing Countries

Bangladesh's experience of labour law reform is not unique; it reflects challenges and dilemmas that are shared by many developing countries attempting to improve labour standards in the context of export-led development. The comparative literature on labour law reform in developing countries provides several important lessons.

First, the effectiveness of labour law depends critically upon the strength of the enforcement apparatus and the independence of labour inspection from political and employer pressure. Countries that have achieved significant improvements in labour standards have typically invested in building effective, well-resourced, and professional labour inspectorates. Bangladesh's chronic under-investment in labour inspection has been a major obstacle to the translation of legislative reform into practical improvement.

Second, the effectiveness of collective bargaining as a mechanism for improving wages and working conditions depends upon the existence of a genuine power balance between employers and workers. In contexts where the structural power of employers is overwhelming and where workers have no effective alternative to acceptance of employer terms, collective bargaining cannot deliver meaningful improvements even when it is formally permitted. Building effective worker power requires both legal reform and the development of genuine trade union organization.

Third, the reform of labour standards in the context of global supply chains requires attention to the responsibilities of international buyers and brands, not merely to the obligations of domestic employers and governments. The Bangladesh Accord's approach, which imposed binding obligations on international brands and created accountability mechanisms for their compliance, represents an important model that could be further developed.

Fourth, social protection is not a luxury but a precondition for effective labour regulation. Workers who have no income support when they lose employment and no health care when they are sick cannot afford to assert their legal rights or to resist employer violations. The development of comprehensive social security coverage is therefore not separable from the project of strengthening labour law enforcement.

## 15.3 Theoretical Synthesis: Toward a Critical Political Economy of Labour Law Reform in Bangladesh

The analysis presented in this first part of the textbook supports the following theoretical conclusions about the nature and dynamics of labour law reform in Bangladesh.

First, Bangladeshi labour law cannot be understood as a neutral technical framework for regulating employment relationships. It is, as Marxist and critical legal theorists have argued, a terrain of political struggle in which the competing interests of capital and labour, of the state and civil society, of domestic political actors and international institutions, are contested and negotiated. The form of the law, its concepts, categories, and institutional arrangements, is not politically innocent; it embeds particular assumptions about the nature of employment, the legitimate interests of employers and workers, and the appropriate role of the state in regulating the labour market.

Second, the colonial genealogy of Bangladeshi labour law continues to shape its form and its limitations in ways that must be acknowledged and addressed. The legal transplantation that brought British and Pakistani labour law to Bangladesh was not a neutral process of modernization but a politically interested act of imperial power, and the inherited legal architecture is not always well-suited to the needs and circumstances of Bangladeshi workers.

Third, the international dimension of Bangladeshi labour law, including the ILO framework, trade conditionality, and transnational private regulation through mechanisms like the Accord, is an important and potentially positive force for the improvement of labour standards. But it must be understood as one element of a complex political system, not as a simple technical solution to the problem of labour exploitation.

Fourth, the development of effective labour law requires not only legislative reform but also attention to institutional capacity, legal consciousness, worker organization, and the structural conditions of economic power that determine whether formal legal rights can be made practically effective.

Fifth, the Rawlsian, republican, Marxist, feminist, and postcolonial theoretical perspectives surveyed in this first part all contribute important insights to the analysis of Bangladeshi labour law, and a comprehensive and adequate understanding of the field requires engagement with all of these traditions.

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## CHAPTER SIXTEEN: LOOKING FORWARD: AGENDA FOR REFORM AND THEORETICAL HORIZONS

### 16.1 The Immediate Reform Agenda

The analysis presented in the preceding chapters supports the identification of the following immediate priorities for labour law reform in Bangladesh.

First, the effective implementation of the 2025 amendment requires significant investment in enforcement capacity. The Department of Inspection for Factories and Establishments must be

provided with the resources, training, and institutional independence necessary to enforce the new provisions effectively. This includes a substantial increase in the number and quality of inspectors, the development of modern information management systems, the introduction of effective sanctions for inspector corruption, and the establishment of mechanisms for worker participation in compliance monitoring.

Second, the Labour Court system must be fundamentally reformed to address the crisis of delay and inaccessibility. This requires the appointment of additional Labour Court judges, the provision of adequate resources for Labour Court administration, the development of effective legal aid mechanisms for workers, and the introduction of case management systems to reduce backlogs. The alternative dispute resolution mechanisms introduced by the 2025 amendment must be given a genuine chance to succeed by ensuring their accessibility, independence, and enforceability.

Third, the minimum wage setting process must be reformed to ensure that minimum wages keep pace with the cost of living and provide workers with a genuinely living wage. This requires the introduction of automatic indexation of minimum wages to a representative measure of consumer price inflation, the development of rigorous methodologies for estimating living wages, and the strengthening of worker representation in the Minimum Wages Board.

Fourth, social security coverage must be expanded to provide genuine income security to all workers, including those in informal and non-standard employment. This requires the development of a universal contributory social insurance system covering unemployment, illness, disability, and old age, alongside the strengthening of existing social protection programs.

Fifth, the definition of "worker" must be further broadened and the scope of the Act's coverage extended to agricultural workers, home-based workers, and workers in the gig economy. This requires both legislative changes to the definitions in the Act and the development of inspection and enforcement mechanisms appropriate to the particular circumstances of non-standard and informal workers.

### 16.2 The Long-Term Transformative Agenda

Beyond the immediate reform agenda, there is a long-term transformative agenda for Bangladeshi labour law that connects to the broader project of building a more just and democratic society.

The long-term transformative agenda includes the development of a genuinely democratic industrial relations system in which workers have effective power to participate in decisions about the terms and conditions of their employment, through strong and independent trade unions, effective collective bargaining, and worker participation in enterprise governance.

It includes the development of a comprehensive and universal welfare state that provides all Bangladeshi citizens with security against the major economic risks of modern life, not as charity or paternalistic gift but as a matter of social right.

It includes the development of an economic development strategy that treats the improvement of workers' wages and working conditions not as an obstacle to competitiveness but as a driver of productivity, innovation, and sustainable development.

It includes the development of a legal culture that takes workers' rights seriously as human rights, that makes the legal system genuinely accessible to the poorest and most vulnerable, and that holds powerful employers and state officials accountable for violations of the law.

And it includes the development of a critical and engaged scholarship on Bangladeshi labour law that takes seriously the insights of the philosophical, jurisprudential, and theoretical traditions surveyed in this first part, and deploys them in service of the workers whose lives are shaped by the law's provisions and failures.

### 16.3 Theoretical Horizons: The Future of Labour Law Scholarship

The field of labour law is undergoing significant theoretical development in the early twenty-first century, driven by several major forces: the changes in the nature of work associated with digitization and the gig economy, the increasing significance of global supply chains and transnational labour regulation, the revival of Marxist and critical theory in legal scholarship, the development of republican and capability-based approaches to workers' rights, and the growing integration of postcolonial and feminist perspectives into mainstream labour law scholarship.

The most significant recent theoretical development, as reflected in the December 2024 paper by Maja Breznik in the Industrial Law Journal and in the broader debate about Pashukanis and labour law, is the renewed engagement with the question of whether labour law is capable of delivering genuine social transformation or whether it is inherently constrained by the legal form of capitalist society. This debate connects the abstract theoretical questions of jurisprudence to the very practical question of whether the 2025 reform of Bangladeshi labour law can deliver meaningful improvement in the lives of Bangladeshi workers, or whether it will be absorbed and neutralized by the structural power of capital.

This is a question that cannot be answered purely theoretically; it requires sustained empirical investigation and critical engagement with the lived experience of Bangladeshi workers. But the theoretical resources surveyed in this first part provide the analytical framework within which such investigation can be conducted.

The capability approach associated with Amartya Sen and Martha Nussbaum offers another significant theoretical horizon for labour law scholarship. Sen's argument that development must be understood in terms of the expansion of human capabilities, the real freedoms that people enjoy to lead lives they have reason to value, rather than in terms of GDP or income alone, has profound implications for the assessment of labour law. On the capability approach, labour law is adequate only if it genuinely expands the capabilities of workers: their ability to work in conditions that are safe and dignified, to associate freely with their colleagues, to earn wages sufficient to support themselves and their families, to have genuine alternatives to exploitative employment, and to participate in the political and social decisions that affect their lives.

Assessed against the capability framework, Bangladeshi labour law falls far short of adequacy, not only because its specific provisions are inadequate but because the broader conditions of poverty, inequality, and lack of alternatives that constrain workers' choices and capabilities are not addressed by labour law alone. The capability approach thus reinforces the conclusion that labour law reform must be understood as one element of a broader project of democratic development, not as a technical fix for a discrete regulatory problem.

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## CONCLUDING REFLECTIONS ON PART ONE

This first part of the textbook has sought to establish the philosophical, historical, jurisprudential, and political foundations necessary for a comprehensive and critical understanding of Bangladeshi labour law and the agenda for its reform. The analysis has ranged widely across the history of Western and non-Western political philosophy, the colonial and postcolonial history of Bangladesh, the specific provisions of the Bangladesh Labour Act, and the contemporary theoretical debates in labour law scholarship.

Several key themes emerge from this analysis that will be developed in subsequent parts of the textbook.

The first is the theme of structural inequality. The inequality of power between employers and workers is not an accidental feature of the employment relationship but is embedded in the structure of a capitalist economy in which workers lack ownership of the means of production and must therefore sell their labour power to survive. Labour law is an attempt to manage and moderate this structural inequality, but it cannot abolish it; and the persistent gap between the formal legal protections of Bangladeshi labour law and the actual conditions of Bangladeshi workers reflects the limits of a regulatory strategy that does not address the structural roots of worker vulnerability.

The second is the theme of colonial inheritance. The colonial origins of Bangladeshi labour law are not merely historical curiosities; they are active constraints upon the development of legal forms and institutions genuinely suited to the needs of Bangladeshi workers and society. The project of legal reform in Bangladesh must engage critically with this colonial heritage, asking not only what changes are needed in the existing framework but whether the framework itself, built upon colonial legal categories and assumptions, is adequate to the task.

The third is the theme of the gap between law and reality. The history of Bangladeshi labour law is a history of the persistent gap between legal text and legal practice, between the formal protections of the statute and the lived experience of workers. This gap is not a technical enforcement failure; it is a political phenomenon rooted in the structural power of employers, the weakness of workers' organizations, the complicity of the state, and the limited capacity of the legal system. Addressing this gap requires political will and structural change, not merely legislative amendment.

The fourth is the theme of international dimension. The development of Bangladeshi labour law cannot be understood in purely domestic terms; it is shaped by international trade relationships, international labour standards, transnational advocacy, and the dynamics of the global supply chain. The most important recent developments in Bangladeshi labour law, including the 2025 amendment and the ratification of new ILO conventions, have been significantly driven by international pressure and international commitments. This international dimension is both an opportunity and a risk: an opportunity because it provides normative resources and external leverage for reform, and a risk because it may substitute external accountability for genuine domestic democratic accountability.

The fifth theme is that of transformative possibility. Despite the formidable obstacles to labour law reform in Bangladesh, there are genuine grounds for cautious optimism. The July Revolution of 2024 created a political opening for reform that has been partially seized through the 2025 amendment. The persistent activism of the labour rights movement, the growing sophistication of worker organizations, the increasing international attention to supply chain labour conditions, and the normative resources of the international human rights and labour standards framework all provide genuine resources for the ongoing struggle for workers' rights. The history of labour law is, among other things, a history of the gradual extension of rights to those who were previously excluded, and there is no reason why Bangladesh's history should be different.

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## BIBLIOGRAPHIC NOTES FOR PART ONE

The analysis in this first part draws upon a wide range of primary and secondary sources. On the philosophy of labour law, the foundational text is the collection edited by Collins, Lester, and Mantouvalou, "Philosophical Foundations of Labour Law" (Oxford University Press, 2018), which surveys the major theoretical approaches to the normative foundations of the field. Kahn-Freund's classic essay on the purpose of labour law remains essential reading. On the Marxist analysis of labour law, the December 2024 article by Maja Breznik in the Industrial Law Journal is the most recent and sophisticated statement of the debate about Pashukanis and the theory of legal form, and it should be read alongside Adams's critique of trade union legal mobilization and the earlier work of Tomlins and Tucker on the historical dimensions of Marxist legal analysis.

On the history of Bangladeshi labour law, the work of scholars including Afsan Chowdhury, Naila Kabeer, and Dina Siddiqi provides essential background. The ILO's Bangladesh Labour Market Profiles, updated annually, provide comprehensive data on the labour market, trade unions, and labour regulation. The National Action Plan on Fire and Building Safety and its periodic progress reports, published by the Ministry of Labour and Employment, provide detailed information on the implementation of post-Rana Plaza reforms. The Bangladesh Law Digest's analysis of the 2025 amendment, published in March 2026, provides the most comprehensive publicly available commentary on the specific provisions of the amendment.

On the jurisprudence of postcolonial legal systems, Upendra Baxi's work on the suffering of law and the uses of legal terror provides an essential critical framework. Ratna Kapur's work on

feminist postcolonialism and law in the South Asian context is essential for understanding the gendered dimensions of the colonial legal heritage. Mahmood Mamdani's work on citizens and subjects provides a broader political theoretical context for understanding the legacy of colonial governance.

On international labour standards and the ILO, the comprehensive treatise by Lee Swepston on the ILO's supervisory machinery provides authoritative guidance. Virginia Mantouvalou's work on workers' rights as human rights is essential for understanding the philosophical foundations of the international labour standards framework. The decisions of the ILO Committee on Freedom of Association relating to Bangladesh provide detailed documentation of the specific compliance concerns that have driven the reform process.

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*End of Part One*

*The sixteen parts of this textbook will collectively provide a comprehensive treatment of the commentary and necessary reforms in Bangladesh's labour law. Part Two will examine in detail the provisions and jurisprudence of the Bangladesh Labour Act, 2006 on conditions of service and employment, including the reform of the concept of the employment contract in light of changing patterns of work.*

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*This textbook is dedicated to the workers of Bangladesh, whose labour builds the clothing worn by hundreds of millions across the world, and whose rights deserve the full protection of a just and effective legal order.*

## PART TWO: THE EMPLOYMENT CONTRACT, CONDITIONS OF SERVICE, AND THE DOCTRINAL FRAMEWORK OF INDIVIDUAL LABOUR RIGHTS

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## CHAPTER ONE: THE EMPLOYMENT CONTRACT AS LEGAL INSTITUTION AND SOCIAL RELATIONSHIP

### 1.1 The Paradox of the Employment Contract: Freedom and Subordination

There is something philosophically remarkable, and philosophically troubling, about the employment contract. It is, by formal legal definition, an agreement entered into by two free and equal legal persons, each possessing the capacity to bind themselves by their own voluntary promise, each in principle capable of refusing the terms offered and walking away from the bargain without consequence. Yet every serious student of labour law, every honest economist, and every worker who has ever sat across a desk from a hiring manager knows that this picture of formal equality conceals a reality of profound structural inequality. The employment contract is a legal institution that simultaneously affirms and denies the humanity of the person who must

rely upon it for survival. This paradox lies at the very heart of labour law as a discipline, and it is the deepest theoretical problem that any serious commentary on the employment contract must confront.

The great English legal historian Sir Otto Kahn-Freund understood this paradox with unusual clarity. He argued that the employment contract is unlike any other contract in private law because its subject matter is not merely the exchange of goods or services but the submission of one person's will and capacity to the direction of another. When a person sells a commodity, they surrender ownership of a thing and receive money in exchange, and the transaction is thereafter completed. But when a person sells their labour power, they surrender, for the duration of the working day, the right to direct their own activity. They come under the authority of the employer, subject to the employer's instructions, vulnerable to the employer's disciplinary power, dependent upon the employer's continuing satisfaction for the continuation of their livelihood. This is a relationship of authority, not merely a relationship of exchange, and it is a relationship that endures over time and involves the whole person, not merely a single discrete transaction.

The insight that the employment contract constitutes a relationship of authority and subordination, not merely a commercial exchange, is the foundational insight of labour law as a discipline. It explains why labour law has developed as a distinct body of regulation, separate from the general law of contract, imposing public law constraints upon what would otherwise be a purely private arrangement. And it explains why the adequacy of those constraints is always and inherently a political question, because the extent to which the law limits the employer's authority over the worker's time, body, and dignity is a question about the distribution of power in society.

In Bangladesh, this question has been answered through a particular historical trajectory, a particular legislative framework, and a particular set of political and economic conditions. The Bangladesh Labour Act, 2006, as amended through the Bangladesh Labour (Amendment) Ordinance, 2025, and subsequently transformed into the Bangladesh Labour (Amendment) Act, 2026, through parliamentary passage in April 2026, constitutes the primary statutory framework within which the employment contract in Bangladesh is understood, regulated, and adjudicated. But that statutory framework cannot be understood in isolation from the common law doctrines that underpin it, the international standards that inform it, the philosophical traditions that critique it, and the political economy that has shaped it.

This second part of the textbook undertakes a systematic and critical examination of the employment contract and the conditions of service as they are regulated under Bangladeshi law. It examines the legal architecture from multiple angles: the technical doctrinal analysis of specific statutory provisions and their judicial interpretation, the philosophical and jurisprudential assessment of the framework's adequacy, the comparative and international perspective that reveals both the specific deficiencies of Bangladeshi law and the range of alternative approaches available, and the political economy analysis that explains why the law looks the way it does and what interests it serves. The ultimate aim is to identify the specific reforms that would transform the law governing the individual employment relationship from an instrument of employer dominance into a genuine framework of worker dignity and economic justice.

## 1.2 The Historical Evolution of the Employment Contract in the Subcontinent: From Master and Servant to Modern Labour Law

To understand the employment contract in Bangladesh today, it is necessary to understand where it came from. The legal concept of the employment contract that operates in Bangladesh is not an indigenous product of Bangladeshi legal culture; it is a transplant from the British legal system, carried to the subcontinent through the channels of colonial administration, modified in response to the specific conditions of colonial rule, and then inherited, with further modifications, by the successor states of British India. The genealogy of this transplant is a story of legal imperialism, economic exploitation, and the gradual, contested, and incomplete assertion of workers' rights.

The pre-colonial labour arrangements of the Bengal delta, as explored in Part One, were organized through a complex matrix of status obligations, communal ties, caste hierarchies, and customary practices rather than through the individualized contractual arrangements of modern employment law. The weaver, the cultivator, the artisan, and the domestic servant were all integrated into social formations that defined their obligations and entitlements through relationships of reciprocity, hierarchy, and tradition, rather than through the formal exchange of promises in a market of freely competing individuals. This is not to romanticize pre-colonial social arrangements, which were frequently oppressive and often involved severe exploitation. But it is to note that the colonial introduction of contractual forms of labour organization represented a fundamental rupture with pre-existing social arrangements, a rupture that served the interests of the colonial economy rather than the welfare of the labouring classes.

The legal framework of master and servant that the British colonial administration applied to the employment relationship in India was not the genteel common law of England's domestic labour market, which by the nineteenth century was at least formally organized around the principle of voluntary contractual exchange. It was a coercive framework that drew upon penal sanctions to enforce the obligations of servants, that treated breach of the labour contract by the worker as a criminal matter punishable by imprisonment or fine, and that gave the master extraordinary powers of discipline and control over the servant's person. The Workmen's Breach of Contract Act, 1859, was the most notorious legislative expression of this framework. Under this Act, a worker who left employment without notice, or who refused to work, could be prosecuted criminally and sentenced to imprisonment with hard labour. This was not free contract; it was contract enforced through the threat of criminal punishment, a form of labour coercion that bore a closer resemblance to serfdom than to the liberal ideal of voluntary exchange.

The Workmen's Breach of Contract Act remained in force in British India for decades, though it was repeatedly criticized by labour advocates and by members of the British Parliament as incompatible with the principles of free labour. Its eventual repeal was part of a broader shift in colonial labour policy driven by a combination of humanitarian pressure, changing economic conditions, and the growing political power of the Indian nationalist movement. The shift from penal enforcement of the labour contract to the regulatory protection of workers through minimum standards legislation was not a smooth or linear process; it involved sustained political struggle, and the legislative gains were always incomplete and contested.

The foundational legislative texts of modern Bangladeshi labour law were all products of the colonial and early post-colonial period: the Factories Act, 1881 and its successors, the Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Employers' Liability Act, 1938, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. These Acts established the basic architecture of employment law in the subcontinent, and they were the building blocks from which the Pakistan Labour Code and ultimately the Bangladesh Labour Act, 2006, were constructed.

The Industrial Employment (Standing Orders) Act, 1946, deserves particular attention in the context of the employment contract, because it established the first legislative requirement for formal written statements of the terms and conditions of employment. The Act required employers in industrial establishments employing fifty or more workers to formulate and certify "standing orders" setting out the terms and conditions of employment, including classification of workers, leave entitlements, disciplinary procedures, and termination provisions. The standing orders model introduced a form of quasi-contractual regulation of the employment relationship that went beyond the simple bilateral contract of master and servant: it imposed a form of collective, publicly certified statement of the terms of employment, subject to governmental approval, as a minimum standard from which individual contracts could not derogate.

This model of standing orders was carried forward into the Bangladesh Labour Act, 2006, as the "service rules" provisions, though with significant modifications and considerable doctrinal uncertainty about the precise relationship between the statutory framework, the employer's standing orders or service rules, and the individual employment contract.

### 1.3 The Common Law Foundations of the Employment Contract: Mutuality, Control, and the Tests of Employment Status

Before examining the statutory framework of Bangladeshi labour law in detail, it is necessary to survey the common law doctrines that provide the conceptual foundations upon which the statutory framework rests. The common law of employment, developed primarily in the English courts over the course of more than two centuries, has established the basic categories and concepts that organize the employment relationship as a legal institution. These common law concepts operate in Bangladeshi law partly directly, through the general reception of English common law principles, and partly indirectly, through the statutory language of the BLA 2006 and its predecessors, which was drafted with these common law concepts in mind.

The most fundamental common law question in the law of employment is the question of whether a particular relationship constitutes employment at all. This question, known as the question of employment status, determines whether a person is entitled to the statutory protections of labour law or falls outside those protections as an independent contractor, a self-employed person, or some other category of non-employee. The question of employment status has been the subject of extensive judicial and academic analysis in England and in other common law jurisdictions, and the tests that have been developed to answer it reveal a great deal about the nature and purposes of employment law.

The earliest common law test of employment status was the "control test," which held that a person was an employee if the person who engaged their services had the right to control not merely what they did but how they did it. The master, on this view, had the right to direct the servant's work in detail, to tell the servant what to do and precisely how to do it, and this right of detailed direction distinguished employment from independent contracting. This test had an obvious logic in the conditions of nineteenth century employment, when most workers were engaged in relatively simple manual tasks under the immediate supervision of foremen and managers who could and did direct their work in considerable detail.

But the control test became increasingly inadequate as the economy changed. The employment of skilled professionals, technical workers, and managerial employees who possessed expertise that their employers lacked made it impossible to maintain the fiction that the employer controlled the detailed manner in which the work was performed. A surgeon employed by a hospital, a solicitor employed by a law firm, or an engineer employed by a manufacturing company could not realistically be said to be under the employer's control in the sense that a textile operative or a domestic servant was. And yet these skilled professionals were clearly employees in the sense that mattered for the purposes of labour law: they worked for wages, they were integrated into the employer's organisation, and they were dependent upon the continuation of their employment for their livelihood.

The courts responded to this problem by developing more sophisticated tests of employment status. The "organization test" or "integration test" proposed by Lord Denning in Stevenson, Jordan and Harrison Ltd v. MacDonald and Evans (1952) held that a person was an employee if their work was performed as an integral part of the business of the person who engaged them, as distinct from being merely accessory to that business. The mutuality of obligation test, developed through a long series of English cases, held that the minimum requirement for an employment contract was the existence of obligations on both sides: the employer must be obliged to offer work, and the worker must be obliged to accept it, at least to some minimum degree. Without this mutuality of obligation, there could be no employment contract, only a series of discrete casual engagements.

The economic reality test, which emerged from American labour law and has increasingly influenced common law jurisdictions, focuses on the economic dependence of the worker upon the person who engages their services. A person is an employee, on this test, if their economic livelihood depends substantially upon their engagement with a single principal, even if the formal structure of that engagement is cast in the language of independent contracting. This test is directly relevant to the Bangladeshi context, where many workers who are formally classified as independent contractors or casual workers are in fact economically entirely dependent upon a single employer and have no meaningful autonomy in the conduct of their work.

The United Kingdom Supreme Court's decision in Uber BV v. Aslam (2021) represents one of the most significant recent developments in the common law of employment status. The Court held that Uber drivers, who had been classified by the company as independent contractors, were in fact "workers" within the meaning of the Employment Rights Act 1996 and the National Minimum Wage Act 1998. The Court's reasoning drew upon the economic reality of the Uber drivers' situation: they were economically dependent upon Uber for their income, Uber set the

rates at which they worked and the terms upon which they operated, and the formal characterization of the relationship as independent contracting was a legal fiction designed to evade the obligations of employment law. The Court held that the purpose of employment legislation was to protect workers from the superior bargaining power of those who employ them, and that this purpose required the courts to look beyond the formal structure of the arrangement to its underlying economic reality.

The Uber BV decision has profound implications for the analysis of employment status in Bangladesh, where the gig economy is growing rapidly and where large numbers of workers are engaged through digital platforms that use the independent contractor model to avoid the obligations of labour law. The decision illustrates how common law courts, operating within the traditional framework of employment status analysis, can and should use the economic reality test to pierce the veil of contractual formalism and ensure that workers who are in substance employees receive the legal protections to which they are entitled.

### 1.4 The Statutory Definition of "Worker" in the Bangladesh Labour Act: Scope, Exclusions, and the 2025 Transformation

The statutory framework of the Bangladesh Labour Act, 2006 is built upon a definition of "worker" that determines who is entitled to the Act's protections. Before the 2025 amendment, the definition of "worker" in Section 2(65) of the BLA 2006 defined a worker as any person employed in any establishment or industry to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, and included an apprentice, but did not include a person employed mainly in a managerial or administrative capacity. Certain categories of workers were expressly excluded from the Act's coverage, including workers employed in a domestic capacity in a private household, agricultural workers, workers employed by the government, and certain other categories.

The exclusion of domestic workers and agricultural workers from the definition of "worker" was one of the most significant and most criticized features of the pre-2025 BLA framework. Domestic workers, who number approximately two to three million in Bangladesh, predominantly women and girls, many of them minors, are among the most vulnerable and exploited workers in the entire economy. They work in isolated conditions in private homes, without any legal entitlement to minimum wages, working time limits, leave, occupational safety protection, or any other of the statutory rights available to workers in formal employment. Their exclusion from the Act's coverage was a structural feature of a legal framework designed with industrial employment in mind, a framework that reflected and reproduced the gendered undervaluation of domestic labour that feminist labour law scholars have consistently identified as a fundamental inadequacy of mainstream labour law.

Agricultural workers, numbering in the millions and constituting the backbone of the rural economy, were similarly excluded from the Act's coverage. Their exclusion reflected the pattern of colonial labour legislation, which had consistently treated agricultural labour as a matter for separate and typically less protective regulation. In practice, the exclusion of agricultural workers from the BLA's coverage means that millions of the most vulnerable and economically marginalised workers in Bangladesh have no entitlement to the statutory protections of minimum

wages, working time limits, occupational safety, or industrial dispute resolution that industrial workers enjoy.

The Bangladesh Labour (Amendment) Ordinance, 2025, subsequently enacted as the Bangladesh Labour (Amendment) Act, 2026, introduced a transformation in the definition of "worker" that is one of the most significant changes in the history of Bangladeshi labour legislation. Section 2 of the BLA has been amended to include, within the definition of "worker," domestic workers and seafarers, two categories that had previously been entirely excluded from the Act's coverage. Additionally, the definition now expressly includes agricultural workers within the Act's scope, though the precise extent of coverage for agricultural workers and the specific provisions that apply to them require careful analysis.

This expansion of the definition of "worker" represents a significant step toward the goal of universal coverage of the Act's protections. The 2025 amendment included definitions of seafarer, agricultural worker, and domestic worker in Section 2, meaning that these workers will now be entitled to accident compensation, the right to form trade unions, and the right to file cases in labour courts. Bdlawdigest The extension of these rights to domestic workers in particular represents a historic advance for what has been described as the most invisible and most exploited segment of the Bangladeshi workforce.

However, the expansion of coverage raises a series of important doctrinal and practical questions that require detailed analysis. The inclusion of domestic workers within the definition of "worker" does not automatically mean that all the provisions of the BLA apply to them without modification. Domestic work takes place in private homes, not in industrial establishments or commercial enterprises, and many of the Act's provisions, including the working time provisions, the occupational safety provisions, and the trade union provisions, were designed with industrial and commercial workplaces in mind and may require significant adaptation to be practically applicable to the domestic work context.

The theoretical framework for thinking about the inclusion of domestic workers in the labour law framework draws upon a rich body of feminist jurisprudence and political economy. Feminist scholars such as Judy Fudge, Rosemary Hunter, and Joanne Conaghan have argued that the exclusion of domestic work from mainstream labour law frameworks is not a technical oversight but a structural feature of a legal system built upon gendered assumptions about the nature and value of different kinds of work. The domestic work that women have performed in the home, including cooking, cleaning, childcare, and eldercare, has historically been treated as a natural extension of femininity rather than as labour, and this gendered devaluation of domestic work has been reproduced in the legal framework of labour law, which has consistently organised its protections around the model of the industrial male worker.

The inclusion of domestic workers in the definition of "worker" in the BLA 2025 amendment challenges this gendered exclusion, but it does not resolve the deeper theoretical question of how the law should understand and regulate domestic work. The employment relationship between a domestic worker and an employer is different in important respects from the employment relationship between an industrial worker and a factory owner. It takes place in the intimate space of the private home rather than in the impersonal space of the factory floor. It involves a

relationship of personal service and personal interaction that is different from the depersonalized relationship of industrial production. And it often involves a power asymmetry that is compounded by factors of class, caste, and, in many cases, age, since child domestic workers remain a serious problem in Bangladesh despite their formal prohibition.

The question of how the legal framework should be adapted to address these specific features of domestic work, rather than simply applying the industrial model of labour regulation to domestic workers by default, is one that requires careful legislative attention, and it is a question to which the 2025 amendment does not provide fully satisfactory answers. The development of a specific regulatory framework for domestic work, informed by the ILO's Domestic Workers Convention, 2011 (Convention No. 189), which Bangladesh has not yet ratified, and by the experience of other countries that have developed specific domestic worker protections, is an important agenda item for future legislative reform.

### 1.5 The Formation of the Employment Contract: Offer, Acceptance, and the Written Contract Requirement

The formation of the employment contract in Bangladeshi law is governed by the general principles of contract law under the Contract Act, 1872, which established the basic framework for contractual liability in British India and continues to apply in Bangladesh. An employment contract, like any other contract, requires an offer, an acceptance, consideration, and the capacity of both parties to contract. The general law of contract treats the employment agreement as binding once these elements are established, regardless of whether the agreement is in writing.

However, the Bangladesh Labour Act, 2006, imposes specific requirements regarding the form and content of the employment agreement that supplement and qualify the general law of contract. Section 5 of the BLA 2006 requires employers to issue appointment letters to workers and to maintain a register of workers. The appointment letter is the primary documentary evidence of the terms of the individual employment contract, and it is required to contain specific information about the worker's identity, the terms of employment, the rates of wages and other benefits, and the conditions of service.

The requirement of a written appointment letter is of enormous practical importance for the protection of workers' rights. Without a written appointment letter, workers are unable to prove the terms of their employment in the event of a dispute, and they are entirely dependent upon the employer's good faith or the testimony of witnesses in establishing what they are entitled to. In practice, however, the requirement for written appointment letters has been systematically violated by many Bangladeshi employers, particularly in the informal sector and in smaller establishments. Workers in garment factories, construction sites, and domestic service have frequently worked for years without receiving any written documentation of the terms of their employment, leaving them completely vulnerable when disputes arise.

The Labour Rules, 2015, elaborate the requirements for written contracts and appointment letters, specifying the information that must be included in the appointment letter and establishing the procedures for the employer's maintenance of employment records. The Rules require that every worker be provided with an appointment letter within three months of

commencing employment, and they specify the information that the letter must contain. These requirements are important, but their practical enforcement has been weak, and the penalties for non-compliance have been insufficiently deterrent.

The question of what happens when there is no written appointment letter, or when the appointment letter is silent on a particular matter, is governed by a combination of the express terms that can be established by oral or other evidence, the implied terms that the courts have developed to fill gaps in the express agreement, the statutory minimum standards that apply regardless of what the parties have agreed, and the employer's service rules or standing orders if they exist. The interaction between these different layers of contractual obligation is complex and frequently a source of litigation.

The common law doctrine of implied terms in employment contracts is particularly important in this context. The courts have implied a range of terms into employment contracts that serve to regulate the relationship between employer and employee in ways that go beyond what the parties explicitly agreed. The most important implied terms include the duty of the employer to pay wages, the duty of the employer to provide a safe system of work, the duty of mutual trust and confidence that operates in both directions and has been significantly developed in the English courts, and the implied term of good faith that imposes obligations of honest dealing on both parties to the relationship.

The implied term of mutual trust and confidence has been particularly significant in English employment law, where it has been developed by the courts to impose on employers a range of obligations that go well beyond what the express terms of the employment contract provide. The leading English case of Malik v. BCCI SA (1997) established that an employer who conducts business in a corrupt and dishonest manner, even if those practices do not directly affect the employees, can be in breach of the implied term of trust and confidence. Later cases have extended this doctrine to impose obligations on employers to deal honestly and openly with employees in a variety of circumstances, including in disciplinary proceedings, in the handling of grievances, and in making decisions that affect the employee's terms and conditions.

The extent to which this English doctrine of implied trust and confidence has been received into Bangladeshi law is uncertain and contested. The Bangladeshi courts have not developed this doctrine with the same sophistication as the English courts, and the legislative framework of the BLA 2006 provides limited statutory basis for the concept. However, there are good arguments of principle for the development of a similar doctrine in Bangladesh, grounded in the constitutional guarantee of the dignity of workers and in the general principle of good faith that underlies contractual obligations under the Contract Act, 1872.

### 1.6 The Probationary Period: Legal Regulation, Employer Abuse, and Reform Proposals

The probationary period is one of the most practically important and most legally contested aspects of the employment contract in Bangladesh. The BLA 2006 permits employers to require workers to serve a probationary period at the commencement of employment, during which the employer can assess the worker's suitability before confirming them in permanent employment. The standard probationary period under the Act is three months for unskilled workers and six

months for other categories. During the probationary period, the employer can terminate the employment without notice and without the obligations that apply to the termination of permanent employment.

The probationary period serves a legitimate purpose: it allows the employer to assess the worker's competence and compatibility before making the longer-term commitment associated with permanent employment. But in the Bangladeshi context, the probationary period has been systematically abused as a mechanism for circumventing the worker's statutory rights. Employers have extended the probationary period beyond the statutory limits, re-engaged dismissed probationary workers as "new" probationary employees, and used the probationary period as a device to identify and remove union organisers before they can complete the qualifying period for union membership.

The garment industry in particular has been the site of systematic abuse of the probationary period. The high turnover and seasonal variation in orders in the garment sector create pressures on employers to treat a substantial portion of their workforce as effectively temporary, and the probationary period provides a legal mechanism for this treatment that avoids the obligations associated with temporary or casual employment under the BLA. Workers who have been performing the same job in the same factory for months or even years may find themselves repeatedly cycled through probationary periods, never acquiring the permanent status that would entitle them to the full range of statutory protections.

The legal framework for the probationary period contains several important provisions that are designed to prevent abuse, but their enforcement has been weak. Section 4 of the BLA 2006 provides that if a worker has completed the probationary period without being confirmed in permanent employment, the worker is deemed to have been confirmed. This provision is intended to prevent the indefinite extension of the probationary period, but it has been difficult to enforce in practice because employers often terminate workers at the end of the probationary period and re-engage them, technically starting a new probationary period.

The reform of the probationary period provisions is an important but underrecognized agenda item in labour law reform. A more effective approach would include: a strict prohibition on repeated or extended probationary periods for the same worker in the same or similar role; a requirement that the reasons for failure to confirm must be communicated to the worker in writing and must be demonstrably genuine; the right of a worker who challenges the failure to confirm to have the matter reviewed by an independent body; and stronger penalties for employers who abuse the probationary period as a device for circumventing statutory rights.

From a jurisprudential perspective, the question of the legal status of the probationary worker raises interesting questions about the relationship between employment status and contractual rights. The probationary worker is clearly engaged under a contract of employment, and the employer owes them obligations under the general law of contract and under such provisions of the BLA as apply during the probationary period. But the probationary worker's rights are significantly more limited than those of the permanently employed worker, particularly in relation to termination. This differential treatment of probationary workers is justified by the legitimate employer interest in assessing suitability before making a long-term commitment, but

it must be balanced against the worker's interest in security of employment and protection from arbitrary dismissal.

The philosophical framework of republican non-domination, which holds that the fundamental wrong of arbitrary employment is the subjection of the worker to the uncontrolled will of the employer, is directly applicable to the analysis of the probationary period. During the probationary period, the worker is in a position of extreme domination: the employer can dismiss them at will, without giving reasons, and without any meaningful right of challenge. The development of procedural protections for probationary workers, including the requirement that the employer give genuine reasons for non-confirmation and provide an opportunity to be heard, would represent a significant advance in the republican direction.

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## CHAPTER TWO: CONDITIONS OF SERVICE UNDER THE BANGLADESH LABOUR ACT: A SYSTEMATIC ANALYSIS

### 2.1 The Architecture of Conditions of Service: Statutory Floors and Contractual Ceilings

The conditions of service of workers in Bangladesh are regulated through a multi-layered framework that combines statutory minimum standards, employer service rules or standing orders, collective agreements where they exist, and the express and implied terms of the individual employment contract. Understanding how these different layers interact is essential for any practical or theoretical analysis of the rights and obligations of parties to the employment relationship.

The statutory minimum standards established by the BLA 2006 and the Labour Rules, 2015, operate as a floor below which the terms of the individual employment contract cannot fall. This principle, which is expressed in the language of the Act through the provision that any agreement to exclude or waive the Act's protections is void, is the cornerstone of the protective purpose of labour legislation. It means that the formal equality of the parties to the employment contract is supplemented by a substantive guarantee that certain minimum conditions will be observed regardless of what the formal contract says.

Above this statutory floor, the employer's service rules or standing orders may establish terms and conditions of employment that are more favourable to workers than the statutory minimum, or may establish procedures and practices that supplement the statutory framework. The BLA 2006 requires certain categories of employers to formulate service rules, and these rules must be certified by the relevant authority as consistent with the provisions of the Act. In practice, the quality and content of service rules varies enormously, and many smaller employers operate without any formal service rules.

Above the service rules, collective agreements between the employer and the Collective Bargaining Agent (CBA) may establish terms and conditions that go beyond both the statutory minimum and the employer's service rules. Collective agreements are legally binding on the parties that concluded them, and they represent the most significant mechanism through which

workers can improve their conditions of service above the statutory minimum through collective action. However, as discussed in Part One, the collective bargaining system in Bangladesh is weak and fragmented, and collective agreements are rare and often of limited effect in practice.

Finally, at the top of the hierarchy, the individual employment contract establishes the specific terms and conditions of the particular worker's employment, within the framework established by the statutory minimum, the service rules, and the collective agreement. The parties to the employment contract have some freedom to negotiate terms that differ from the statutory minimum, but only in the direction of greater protection for the worker; they cannot contract below the statutory floor.

The theoretical model of concentric protective circles, with the individual contract at the centre surrounded by collective agreement, service rules, and statutory minimum standards, provides a useful analytical framework for understanding the conditions of service framework. But in the Bangladeshi context, this model is largely aspirational rather than descriptive. In practice, the collective agreement layer is almost entirely absent in most sectors. The service rules layer is often inadequate or non-existent in smaller establishments. And the individual contract layer frequently fails to reflect the statutory minimum standards, because workers lack the bargaining power to insist on their statutory entitlements.

The result is a system in which the statutory minimum standards are the primary and often the only regulatory framework for conditions of service, and in which the effectiveness of those standards depends entirely on the capacity and willingness of the state enforcement apparatus to ensure compliance. This makes the quality of labour inspection, the independence of the Labour Court system, and the level of statutory penalties for non-compliance absolutely central to the practical effectiveness of the conditions of service framework.

### 2.2 The Classification of Workers: Permanent, Temporary, Casual, Badli, Apprentice, and Their Legal Consequences

The BLA 2006 establishes a classification of workers into different categories, and the legal consequences of these categories are significant. The Act recognizes the following categories of workers: permanent workers, who have been engaged for work of a permanent nature that has no time limit; temporary workers, who have been engaged for work of a temporary nature that is likely to be finished within a limited period; casual workers, who have been engaged for work that is casual in character; badli workers, who have been engaged temporarily to replace permanent workers; probationers, who are on a trial period; and apprentices.

The distinction between permanent and other categories of workers is one of the most important in the Act, because permanent workers are entitled to the full range of statutory protections, including protection against unfair dismissal, the right to compensation upon retrenchment, and the full range of leave entitlements. Temporary, casual, and badli workers are entitled to the protections of the Act, but with certain modifications and limitations that reflect their non-permanent employment status.

The system of worker classification established by the Act creates significant opportunities for employer manipulation. By deliberately classifying workers as temporary, casual, or badli rather than permanent, employers can avoid many of the most important statutory obligations associated with permanent employment, including the obligation to pay retrenchment compensation and the obligation to provide the full statutory leave entitlements. The garment industry has been particularly notable for the systematic misclassification of workers, with large numbers of workers who have been performing the same job in the same factory for extended periods being maintained in technically temporary or casual status to avoid the obligations of permanent employment.

The judicial response to the problem of misclassification has been uneven. Some Labour Court decisions have held that workers who have been engaged for a continuous period in work that is in reality permanent should be treated as permanent workers regardless of how their employment is formally classified. This approach, which looks through the formal classification to the substance of the employment relationship, is consistent with the purposive approach to statutory interpretation that should inform the reading of protective labour legislation. But not all Labour Court judges have adopted this approach, and the uncertainty about the legal consequences of misclassification creates opportunities for employer avoidance and worker vulnerability.

The theoretical framework for thinking about worker classification connects to the broader question of the nature of employment as a legal relationship. The classifications established in the BLA reflect an industrial model of employment in which workers are divided into those whose employment is intended to be long-term and those whose employment is intended to be short-term or contingent. This model made sense in the context of the heavy industrial employment for which the legislation was primarily designed, but it is increasingly poorly adapted to the contemporary labour market, in which many workers occupy intermediate positions between traditional permanent employment and casual day labour.

The growing literature on precarious work, associated with scholars such as Guy Standing, Arne Kalleberg, and Judy Fudge, draws attention to the way in which the proliferation of non-standard employment forms has undermined the security and stability of the working class. Standing's concept of the "precariat," a new social class characterised by precarious employment, uncertain income, and exclusion from the social rights associated with permanent employment, is directly relevant to the Bangladeshi context, where millions of workers are trapped in temporary, casual, and informal employment arrangements that deny them the protections of the labour law framework.

The reform of the worker classification system is an important dimension of a comprehensive labour law reform agenda. A more adequate system would recognize a broader range of employment relationships and attach meaningful protections to each of them, rather than concentrating rights in the category of permanent employment while leaving workers in other categories with minimal protection. The concept of "dependent contractor," which has been developed in some Canadian jurisdictions and which the ILO has discussed in the context of the platform economy, provides one model for extending protections to workers who fall between the traditional categories of employee and independent contractor.

## 2.3 Termination of Employment: The Complex Legal Landscape of Dismissal, Retrenchment, and Closure

The regulation of termination of employment is one of the most important and most contested areas of the BLA 2006. The ability of the employer to terminate the employment relationship is a critical dimension of employer power over workers, and the legal regulation of that power is one of the central concerns of employment law in all developed legal systems. The BLA 2006 establishes a framework for termination that distinguishes between different grounds and procedures of termination, and that provides different levels of protection and compensation in different circumstances.

The Act recognizes several modes of termination of employment: dismissal for misconduct, termination by employer through notice or payment in lieu of notice, termination by worker (resignation), retrenchment, discharge on grounds of inefficiency or physical incapacity, and termination of the establishment through closure.

Dismissal for misconduct is the most serious form of termination and requires the employer to follow a specific procedure: the worker must be given a charge sheet specifying the allegations, must be given an opportunity to respond to the charges, must be given a personal hearing, and the decision to dismiss must be communicated in writing with reasons. These procedural requirements, known in the common law tradition as the principles of natural justice, are designed to ensure that workers are not dismissed without a fair opportunity to defend themselves against allegations of misconduct. In principle, this is an important protection; in practice, the procedural requirements are frequently violated, and the penalties for procedural irregularity are often inadequate to deter employers from dismissing workers summarily.

The category of misconduct that can justify dismissal is defined in the Act and in the employer's service rules, and it includes a range of conduct from theft, fraud, and violence to insubordination and "unauthorised absence." The breadth of the category of misconduct, and the vagueness of some of its constituent elements, has been a source of significant litigation and has given employers considerable discretion to dismiss workers for conduct that may not in reality justify the termination of the employment relationship. The concept of "insubordination" in particular has been used to justify the dismissal of workers who have asserted their legal rights, raised safety concerns, or engaged in organizing activities, in ways that amount to anti-union discrimination disguised as disciplinary action.

The Supreme Court of Bangladesh and the High Court Division have in various decisions sought to constrain the employer's disciplinary discretion by requiring that the penalty of dismissal be proportionate to the gravity of the misconduct, and by requiring that the procedure of the domestic inquiry be conducted fairly and impartially. The principle of proportionality in disciplinary proceedings has been endorsed in decisions of the Supreme Court, though its consistent application by Labour Courts has been uneven. The principle requires that even where misconduct is proved, the employer must consider whether a lesser penalty, such as a warning, suspension, or demotion, would be more appropriate than dismissal, and must not impose the most severe penalty except in cases where the misconduct is sufficiently serious to justify it.

Termination by employer through notice is available where the employer wishes to terminate the employment relationship without alleging misconduct. The Act requires the employer to give notice of a specified length (which varies with the type of worker and the length of service) or to make payment in lieu of notice. Upon termination through notice, the permanent worker is entitled to certain statutory compensation, including retrenchment compensation if the termination is by way of retrenchment. The amount of retrenchment compensation is calculated on the basis of the worker's length of service, at the rate of thirty days' wages for each completed year of service.

The retrenchment compensation provisions represent an important protection for workers who lose their employment through no fault of their own, but they have been the subject of considerable controversy and litigation. Employers have frequently sought to characterize terminations as dismissals for misconduct in order to avoid paying retrenchment compensation, and workers have challenged such characterizations as sham dismissals designed to deprive them of their statutory entitlements. The Labour Courts have developed a body of jurisprudence on the distinction between genuine misconduct dismissals and sham dismissals, but the application of this jurisprudence has been inconsistent.

The 2026 amendment introduces significant new provisions regarding layoff compensation. The Bangladesh Labour (Amendment) Bill 2026 incorporates provisions aimed at strengthening labour rights and aligning the country's labour standards with international norms, including provisions on layoff compensation and trade union rights. Dhaka Tribune The specific provisions on layoff compensation represent an important development in the framework for economic security of workers who lose their employment.

The theoretical foundations of the law of wrongful dismissal connect to deep questions in employment law jurisprudence about the nature of the worker's property interest in their job, the relationship between individual autonomy and economic security, and the proper scope of the employer's disciplinary authority. The idea that a worker has a form of property interest in their job, developed in the American legal tradition by scholars such as Charles Reich and later applied to employment by commentators on the due process rights of employees, has been influential in shaping the argument for stronger employment security protections. If the worker's job represents a form of property, then the arbitrary removal of that property without adequate procedure and compensation is analogous to the arbitrary seizure of other forms of property, and should be subject to similar legal constraints.

This argument has been taken further by scholars who ground the right to employment security in the broader framework of social rights and economic citizenship. On this view, the right to security of employment is not merely a contractual entitlement or a property right but a dimension of the worker's status as a citizen and as a member of a society that has an interest in ensuring that all of its members have access to the material conditions necessary for a dignified human life. The legal recognition of this right requires not merely contractual protection against unfair dismissal but systemic arrangements, including unemployment insurance, retraining programs, and active labour market policies, that provide genuine economic security for workers in a dynamic labour market.

## 2.4 Notice Requirements and Payment in Lieu of Notice: Technical Analysis and Critical Assessment

The notice provisions of the BLA 2006 are one of the most technically complex and practically significant aspects of the conditions of service framework. The Act establishes different notice periods for different categories of workers and different circumstances of termination, and failure to comply with the notice requirements can give rise to both a statutory remedy and a common law action for wrongful dismissal.

The general principle of the notice provisions is that an employer who wishes to terminate the employment of a permanent worker must give the worker advance notice of a specified minimum period, allowing the worker time to find alternative employment before the termination takes effect. The minimum notice period for permanent workers under the BLA 2006 is: for monthly-rated workers, 120 days; for other workers, 60 days. These relatively long minimum notice periods reflect a recognition that the loss of employment is a serious economic event for the worker and that the worker needs time to adjust to the loss and to find alternative employment.

The option to make a payment in lieu of notice allows the employer to terminate the employment immediately, without the notice period, by paying the worker the wages that would have been payable during the notice period. This option is frequently used by employers who for business reasons need to end the employment immediately rather than maintaining the worker on the payroll during the notice period. The payment in lieu of notice is in addition to any other statutory entitlements upon termination, including retrenchment compensation.

The interaction between the notice provisions and the disciplinary dismissal provisions raises complex questions. Where an employer dismisses a worker for misconduct after following the proper domestic inquiry procedure and satisfying the requirement of just cause, the employer is not required to give notice or payment in lieu of notice, because the dismissal for misconduct is conceptually different from a termination by the employer's decision. However, where the alleged misconduct is found by a Labour Court to have been insufficient to justify dismissal, or where the dismissal procedure was unfair, the worker may be entitled to reinstatement or to compensation that includes an element equivalent to the notice payment.

The treatment of wages during the notice period raises further technical questions. Is the worker entitled to full wages, including overtime and other variable elements, during the notice period, or only to the basic wage rate? The BLA and the Rules provide some guidance on this question, but there are areas of uncertainty that have been the source of litigation. The general principle should be that the worker is entitled during the notice period to the wages they would have earned had they continued working, on the basis that the purpose of the notice period is to provide the worker with economic support while they look for alternative employment.

## 2.5 Retrenchment: Legal Framework, Economic Logic, and the Rights of Retrenched Workers

Retrenchment is the termination of the employment of a permanent worker by the employer for economic reasons, rather than for reasons related to the worker's conduct or capacity. It may arise from a reduction in the workforce due to technological change, declining business, reorganization of the enterprise, or the closure of a particular department or unit. The legal regulation of retrenchment is one of the most important dimensions of employment security protection, because it addresses the situation in which the worker is dismissed not because of any personal failing but because of decisions made by the employer about the organization and scale of the business.

The BLA 2006 establishes specific requirements for lawful retrenchment. The employer must give the worker one month's notice (or payment in lieu) and must pay retrenchment compensation at the rate of 30 days' wages for each completed year of service. The employer must also comply with the "last in, first out" principle, which requires that in determining who is retrenched, the employer must retain workers with longer service in preference to those with shorter service, unless the employer can demonstrate a legitimate business reason for departing from this principle.

The retrenchment provisions also include a requirement that the employer give advance notice to the relevant authority (typically the Chief Inspector) of any retrenchment involving a specified number of workers. This requirement is designed to allow the government to monitor large-scale retrenchments and to intervene if necessary to protect the workers' interests.

The adequacy of the retrenchment compensation provisions has been the subject of sustained criticism. The formula of 30 days' wages per year of service provides modest protection for workers with long service, but it provides inadequate protection for workers with short service, who may be retrenched after only a few years of work and receive a relatively small lump sum payment that is quickly exhausted. Moreover, the retrenchment compensation formula takes no account of the worker's family responsibilities, their age, or their prospects of finding alternative employment, all of which are relevant to the assessment of the economic harm caused by retrenchment.

From an international comparative perspective, Bangladesh's retrenchment compensation provisions fall below the standards prevailing in more developed labour law systems. Many European countries provide for substantially higher redundancy compensation, calculated on the basis of both wages and years of service, and supplemented by unemployment insurance that provides income support during the period of job search. The absence of unemployment insurance in Bangladesh means that the retrenchment compensation payment, however inadequate, is the only financial protection available to retrenched workers during the transition between jobs.

The philosophical justification for retrenchment compensation is grounded in several distinct but related considerations. First, there is the consideration of fairness: it is unjust to deprive a worker of their livelihood without compensation, particularly when the reason for the loss of employment is a business decision by the employer rather than any fault of the worker. Second, there is the consideration of economic efficiency: without retrenchment compensation, workers would have strong incentives to resist necessary structural adjustments in the economy, because

they would bear the full cost of such adjustments without any offsetting compensation. Third, there is the consideration of human dignity: retrenchment compensation recognises the worker's contribution to the enterprise over the period of their service and provides a measure of economic recognition for that contribution.

These considerations support not only the maintenance of the existing retrenchment compensation provisions but their significant enhancement. A more adequate system would increase the rate of compensation, extend coverage to workers with shorter service, provide for a longer notice period, and supplement the retrenchment compensation with a period of income replacement through unemployment insurance. These reforms would bring Bangladesh closer to the standards recommended by the ILO's Termination of Employment Convention, 1982 (Convention No. 158), which Bangladesh has not ratified, and which sets out the international minimum standards for protection against unfair dismissal and retrenchment.

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## CHAPTER THREE: WAGES AND THE POLITICAL ECONOMY OF REMUNERATION

### 3.1 The Concept of the Wage: Legal, Economic, and Philosophical Dimensions

The wage is the most fundamental element of the employment relationship, and the legal regulation of wages is one of the most contested dimensions of labour law. The wage is simultaneously a legal concept, an economic phenomenon, and a political and philosophical issue of profound importance. It is through the wage that the broader distributional conflicts of capitalist society are most directly expressed, and it is through the legal regulation of wages that the law most directly intervenes in the distribution of income between capital and labour.

In legal terms, the wage is the consideration payable to the worker under the employment contract in exchange for the worker's labour power. The BLA 2006 defines wages in Section 2(45) as all remuneration, however designated, capable of being expressed in terms of money, which would, if the terms of service, express or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature of emoluments payable to a worker under any contract of employment or otherwise. The definition is broad and encompasses not only the basic wage but also allowances and other monetary emoluments that are part of the worker's regular remuneration.

The economic theory of wages has been the subject of intense debate since the origins of political economy as a discipline. The classical political economists, including Adam Smith and David Ricardo, treated the wage as determined by the forces of supply and demand in the labour market, subject to a minimum floor constituted by the costs of subsistence and reproduction of the worker and their family. Ricardo's subsistence wage theory, sometimes described as the "iron law of wages," held that competition among workers would drive wages down to the level just sufficient to maintain the worker's existence and to reproduce the labour supply. This theory

suggested that wages were determined by immutable market forces and that legislative intervention to raise wages above the market level would be both futile and counterproductive.

The Marxist critique of the classical political economy of wages demolished the pretension of the market wage to be a fair exchange. Marx argued that the worker's wage represents not the full value of the worker's labour but only the value of the worker's labour power, which is determined by the cost of the worker's subsistence and reproduction. The difference between the value created by the worker's labour and the value of the labour power sold to the employer, which Marx called "surplus value," is appropriated by the capitalist and constitutes the economic basis of profit. The wage relationship is therefore not a fair exchange between equals but a systematic extraction of value from the worker, disguised as a free and equal contract.

The modern labour economics literature on wages has developed in a different direction, recognising that wages are not simply determined by competitive labour market forces but are shaped by a range of institutional, social, and historical factors. The efficiency wage hypothesis, associated with the work of Shapiro and Stiglitz, argues that employers may pay wages above the competitive market level in order to induce greater effort and reduce turnover, because monitoring worker effort is costly and imperfect. The institutional labour economics tradition, associated with the work of John Kenneth Galbraith, John T. Dunlop, and Clark Kerr, argues that wages are determined not by the anonymous forces of the market but by the institutional structures of collective bargaining, government regulation, and employer discretion.

The feminist critique of mainstream wage theory has drawn attention to the way in which wages have historically reflected and reproduced gender hierarchies, with women consistently paid less than men for work of equal value. The concept of the "gender wage gap," which refers to the systematic difference in average wages between men and women, has been extensively documented and analysed, and the legal concept of "equal pay for equal work" or "equal pay for work of equal value" has been developed in international standards and in the domestic law of many countries as a response to this systematic discrimination. In Bangladesh, where women workers are concentrated in the lowest-paid categories of the garment industry and where gender pay gaps are significant, the equal pay principle has important practical relevance.

### 3.2 The Payment of Wages Act Framework: History, Provisions, and Technical Analysis

The regulation of wage payment in Bangladesh has its origins in the Payment of Wages Act, 1936, which was enacted in British India as a response to the widespread practice of employers delaying and deducting wages. The Act established requirements for timely payment of wages, imposed restrictions on the deductions that could lawfully be made from wages, and established a mechanism for the summary adjudication of wage disputes. The provisions of the 1936 Act were incorporated into the BLA 2006 in modified form, and they continue to constitute the primary framework for the regulation of wage payment.

The BLA 2006 requires that wages be paid at regular intervals not exceeding one month, that wages be paid within a specified period of the end of the wage period (seven days for establishments with less than 1000 workers, and ten days for larger establishments), and that wages be paid in legal tender or, in certain circumstances, by cheque or bank transfer. The

requirement for timely payment is fundamental: the denial or delay of wages is one of the most common and most devastating forms of employer exploitation, and the worker who is not paid on time is immediately in economic difficulty, unable to meet basic needs for food, shelter, and the care of their family.

The provisions on deductions from wages specify the circumstances in which deductions can lawfully be made. Lawful deductions include: deductions for absence from work; deductions for damage to employer property; deductions for housing, light, water, and medical facilities provided by the employer; deductions for recovery of advances; and deductions for specified purposes. Deductions are subject to quantitative limits: the total deduction from the wages of a worker in any wage period cannot exceed fifty percent of the wages payable for that period.

The restrictions on deductions from wages are designed to prevent employers from using the mechanism of wage deductions to circumvent the minimum wage and other protective provisions. In practice, however, unlawful deductions are widespread, particularly in the garment sector, where employers have routinely made deductions for production below target, for attendance irregularities, and for other matters not authorised by the Act. The enforcement of the deduction restrictions is an important element of ensuring that workers actually receive the wages to which they are entitled.

The introduction of bank-transfer wage payment in the garment sector, which has been promoted as a policy reform in recent years, has important implications for transparency and accountability in wage payment. When wages are paid in cash, it is very difficult to document what has been paid and what deductions have been made. When wages are paid by bank transfer, there is a paper trail that makes it easier to verify compliance with the minimum wage and the deduction provisions. The transition to cashless wage payment has been a significant element of the post-Rana Plaza reform agenda, and its continued promotion and extension are important for the enforcement of wage rights.

### 3.3 Minimum Wages: Theory, Policy, and the Bangladeshi Reality

The minimum wage is one of the most politically charged and theoretically contested instruments of labour law. The debate about the effects of minimum wages on employment, productivity, and welfare has been one of the most intense and sustained controversies in economics and labour policy. The traditional economic argument against minimum wages, associated with classical and neoclassical economics, holds that a legally mandated wage floor above the competitive market equilibrium will reduce the demand for labour, causing unemployment among the workers it is intended to help. But this argument has been powerfully challenged by empirical research and by theoretical innovations in labour economics.

The landmark empirical study by Card and Krueger, published in 1994, compared employment in fast food restaurants in New Jersey and Pennsylvania before and after New Jersey raised its minimum wage, and found no evidence that the minimum wage increase reduced employment. This study, and the large body of empirical research it stimulated, has significantly undermined the orthodox economic case against minimum wages, and the mainstream consensus in labour economics has shifted toward a view that moderate increases in the minimum wage have little or

no negative effect on employment, while producing significant improvements in the wages and living standards of low-wage workers.

The theoretical explanation for this finding draws upon the concept of "monopsony power" in the labour market. Monopsony, which refers to a situation in which there is a single buyer of labour services (analogous to monopoly on the seller's side), or more broadly to a situation in which employers have market power in the labour market, means that employers in many labour markets are able to pay wages below the competitive market rate because workers have limited alternatives. In a monopsonistic labour market, a minimum wage increase does not reduce employment because the pre-minimum wage level was already below the competitive market wage, and the minimum wage is merely correcting the monopsonistic distortion.

The minimum wage framework in Bangladesh is established primarily through the Minimum Wages Ordinance, 1961, as incorporated into the broader framework of the BLA 2006, and the specific Minimum Wages Board recommendations for different industrial sectors. The minimum wage is set through a tripartite process involving the government, employer representatives, and worker representatives, through the Minimum Wages Board. The Board makes recommendations on the minimum wage for specific sectors, and these recommendations, once approved by the government, have the force of law.

The most prominent minimum wage in Bangladesh is the garment sector minimum wage, which was last revised in November 2023 following a period of intense worker agitation. The 2023 minimum wage was set at BDT 12,500 per month for Grade 7 (the lowest entry-level) workers, representing a significant increase from the previous minimum of BDT 8,000. However, this increase was significantly less than what workers and unions had demanded, and it fell short of the living wage estimates calculated by various researchers and organizations. The workers' demand for a minimum wage of BDT 23,000 was rejected, and the workers' protests that accompanied the minimum wage negotiations were met with police force, resulting in injuries and deaths.

The inadequacy of the minimum wage-setting process in Bangladesh reflects several structural problems. First, the process is too infrequent: minimum wages have historically been revised only every few years, and in between revisions, the real value of the minimum wage is eroded by inflation. The introduction of automatic indexation of minimum wages to a measure of price inflation, as recommended by the Labour Reform Commission, would address this problem and ensure that workers' purchasing power is maintained between formal revision cycles.

Second, the Minimum Wages Board is structurally biased toward employer interests. The Board's composition, its research capacity, and its decision-making process have all been criticised as insufficiently independent of employer influence. The worker representatives on the Board are often drawn from the fragmented and politically affiliated trade union movement rather than from genuine rank-and-file representation, and they may lack the information and analytical capacity necessary to make an effective case for a living wage.

Third, the minimum wage covers only regular wages and does not address the totality of the worker's compensation, including overtime pay, allowances, and in-kind benefits. The focus on

the basic wage rate can obscure the fact that workers' total compensation package may be significantly higher or lower than the minimum wage suggests, depending on the structure of their employment.

The concept of the "living wage," which is distinct from the minimum wage in that it represents not the legal minimum but the wage required to meet the worker's and their family's basic needs, has gained significant traction in academic and policy debates in recent years. The Living Wage Research for the garment industry in Bangladesh, conducted by researchers at the Global Living Wage Coalition and others, has consistently found that the legal minimum wage in the garment sector falls significantly below the estimated living wage, which takes into account the actual costs of food, housing, healthcare, education, and other necessities for a typical garment worker's family.

The philosophical case for the living wage is grounded in the human dignity principle that workers are entitled to wages sufficient to enable them to live a dignified human life. This principle is recognised in Article 23 of the Universal Declaration of Human Rights, which provides that everyone who works has the right to just and favorable remuneration ensuring for themselves and their family an existence worthy of human dignity. It is also recognised in the ILO's foundational principle that labour is not a commodity, which implies that the wage cannot simply be determined by the impersonal forces of the market but must reflect the worker's status as a human being with needs and entitlements that go beyond mere economic efficiency.

### 3.4 Overtime and the Problem of Excessive Working Hours: Law, Practice, and Reform

The legal regulation of overtime in Bangladesh is found primarily in Chapter XII of the BLA 2006, which establishes the maximum ordinary hours of work and the requirements for overtime compensation. The ordinary hours of work are eight hours per day and forty-eight hours per week. Overtime is work performed beyond these limits, and it must be compensated at a rate of twice the ordinary wage rate.

The premium rate for overtime, which is double the ordinary rate, reflects the principle that overtime is an exceptional demand on the worker's time and effort that should be compensated at a premium above the ordinary rate. This premium serves two functions: it compensates the worker for the additional burden of working beyond ordinary hours, and it creates an economic incentive for employers to manage their production within ordinary working hours rather than relying on overtime as a routine feature of the production schedule.

In practice, however, the overtime provisions of the BLA have been systematically violated in the garment sector and in many other industries. Workers are routinely required to work overtime well beyond the statutory maximum, often without adequate compensation, under conditions of economic pressure that make refusal effectively impossible. The reliance of garment factories on overtime to meet production orders with tight deadlines creates a structural incentive for employers to exceed the statutory limits, and the combination of weak enforcement and workers' economic vulnerability means that this structural incentive is typically decisive.

The problem of excessive overtime is not merely a matter of individual worker wellbeing; it is a serious public health issue. The research literature on the health effects of long working hours is extensive and consistent in its findings: working hours significantly beyond the forty-eight hour standard are associated with increased risks of cardiovascular disease, mental health problems, accidents and injuries, and premature death. The ILO and WHO joint report published in 2021, which found that 745,000 deaths per year were attributable to long working hours, represents the most dramatic expression of a large body of research on this question. In Bangladesh, where routine violations of working time standards mean that many garment workers regularly work sixty or more hours per week, the public health consequences of excessive overtime are a serious and underrecognised issue.

The reform of the overtime provisions must address both the legal framework and the enforcement mechanisms. On the legal side, the maximum overtime limit should be reduced and more strictly enforced, and the penalty for exceeding the maximum should be significantly increased. The right to refuse overtime beyond the statutory maximum should be clearly established and protected, with specific protections against dismissal or other retaliation for workers who exercise this right. On the enforcement side, the use of time recording systems, including electronic systems that cannot be manipulated by employers, should be made mandatory for all covered establishments, and these records should be made available to labour inspectors on demand.

The feminist analysis of overtime regulation is directly relevant to the Bangladeshi context. The assumption built into the standard overtime framework, that the worker's non-working time is their own to manage as they choose, ignores the reality that women workers bear a disproportionate burden of unpaid domestic and care responsibilities. When women garment workers are required to work compulsory overtime, they face an impossible choice between complying with the employer's demands and meeting their domestic obligations. The resulting stress, and the inability to balance employment and family responsibilities, is a major factor in women's higher turnover rates in the garment sector and in the broader deterioration of women workers' health and wellbeing.

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## CHAPTER FOUR: LEAVE ENTITLEMENTS AND THE HUMAN DIMENSIONS OF LABOUR REGULATION

### 4.1 The Philosophy of Rest: Why Leave Law Matters

The right to rest and leisure is recognised in Article 24 of the Universal Declaration of Human Rights, which provides that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. This recognition reflects a philosophical and political judgment that work is not the totality of human existence, that workers are human beings with needs for recreation, family life, social participation, and personal development that cannot be satisfied if they are continuously at the disposal of their employers. The legal regulation of leave entitlements is, at its deepest level, an assertion of the

humanity of the worker against the tendency of the market to treat the worker as merely a factor of production to be deployed and exploited as efficiently as possible.

This philosophical perspective connects to the broader tradition of thinking about the relationship between work and human flourishing that extends from the classical political economists through Marx and the Frankfurt School to contemporary philosophers of work such as Joanna Macy, Josef Pieper, and Kathi Weeks. Pieper's classic essay "Leisure the Basis of Culture" argued that the capacity for genuine rest and contemplation, free from the demands of work and production, is the foundation of human culture and of the human capacity for meaning-making. Weeks' more recent work "The Problem with Work" challenges the "work ethic" that has historically been used to justify the subordination of all other dimensions of human life to the demands of the labour market, and argues for a radical reimagining of the relationship between work, rest, and human flourishing.

These philosophical perspectives have concrete legal implications. If workers are human beings with a right to rest and leisure that is constitutively connected to their dignity and flourishing, then the legal regulation of leave entitlements is not merely a technical matter of statutory minima but a moral and political commitment to the value of the worker's humanity. And this commitment means that leave entitlements must be not merely nominal but genuinely usable: workers must not only be legally entitled to leave but must be practically able to take it without fear of economic penalty or employment retaliation.

### 4.2 The BLA 2006 Leave Framework: Provisions and Practice

The BLA 2006 establishes a comprehensive framework of leave entitlements for covered workers, including annual leave, casual leave, sick leave, and, for women workers, maternity leave. The leave provisions apply to all permanent workers and to temporary and casual workers in certain circumstances.

The annual leave provisions entitle permanent workers to paid annual leave at the rate of one day for every eighteen days of work completed during the calendar year, subject to a minimum of eleven working days of leave per year for adult workers in establishments other than tea gardens and newspaper establishments. The entitlement accrues at a rate that means a worker who has worked throughout the year is entitled to approximately twenty days of paid annual leave. Annual leave can be accumulated if not taken in the year of entitlement, subject to a maximum accumulation, and can be en-cashed upon termination of employment.

The casual leave provisions entitle workers to ten days of paid casual leave per year, which can be used for personal emergencies, family commitments, and other short-term absences. Unlike annual leave, casual leave cannot typically be accumulated from year to year and must be used within the leave year.

The sick leave provisions entitle workers to fourteen days of paid sick leave per year, conditional upon the production of a medical certificate from a registered medical practitioner for absences of more than two consecutive days. The sick leave provisions reflect the recognition that workers

are biological beings who will inevitably fall ill during the course of their employment, and that the loss of wages during sickness should not compound the physical suffering of illness.

In addition to these statutory leave entitlements, workers are entitled to a weekly rest day, which must be at least one day per week. The Act also establishes a number of public and national holidays on which workers are entitled to be paid at the ordinary rate without working, subject to limited exceptions.

The practical effectiveness of the leave framework depends upon the extent to which workers are actually able to take their entitlement without fear of adverse consequences. The available evidence suggests that in many sectors, particularly in the garment industry, workers face significant practical obstacles to taking their statutory leave entitlement. Supervisors discourage workers from taking casual or sick leave by imposing informal sanctions such as reduced bonus payments, exclusion from preferred shifts, or adverse marks on attendance records. The culture of continuous production and the pressure of order deadlines in the garment sector creates an environment in which the assertion of leave rights is seen as a disruptive act that threatens the worker's standing with management.

### 4.3 The Festival Bonus and Other Mandatory Payments: Legal Status and Controversies

The festival bonus, locally known as the Eid bonus, is one of the most important and most contentious elements of workers' compensation in Bangladesh. Workers in the garment sector and in many other industries receive a festival bonus of at least one month's wages at the time of the major religious festivals, specifically Eid-ul-Fitr and Eid-ul-Adha. The festival bonus is not expressly provided for in the BLA 2006 in the form of a statutory entitlement; rather, it has become a customary practice that has been given the force of legal obligation through a combination of administrative decisions, Labour Court judgments, and industry agreements.

The legal status of the festival bonus is therefore somewhat uncertain, and this uncertainty has been a source of controversy. Employers have at times sought to reduce or withhold the festival bonus on the grounds that it is not a statutory entitlement and that their financial circumstances do not permit payment. Workers and unions have contested such attempts on the grounds that the festival bonus has acquired the character of a legal obligation through long custom and practice, and that its denial constitutes a breach of the conditions of service. The Labour Courts have generally upheld the worker's claim to the festival bonus as a matter of established practice and legitimate expectation, but the absence of clear statutory language has made the legal position unnecessarily uncertain.

The reform of the festival bonus provisions, through their incorporation into the statutory framework of the BLA as a clear and explicit legal entitlement, would resolve this uncertainty and provide workers with a more secure basis for claiming their entitlement. This reform would also address the problem of employers who exploit the doctrinal uncertainty about the bonus's legal status to withhold it or to pay it late.

### 4.4 Gratuity, Provident Fund, and Long-Service Benefits: The Architecture of Deferred Compensation

The BLA 2006 establishes entitlements to gratuity and, in some circumstances, to provident fund contributions. Gratuity is a lump sum payment made to a permanent worker upon the termination of their employment after a certain period of service, and it functions as a form of deferred compensation that rewards long service and provides workers with a financial cushion upon the end of their employment.

Under the BLA 2006, a permanent worker who has been employed for at least one year is entitled to gratuity upon termination (other than dismissal for misconduct) at the rate of thirty days' wages for each completed year of service, calculated on the basis of the last wages received. This formula means that a worker with ten years of service is entitled to ten months' wages as gratuity, which can be a significant sum relative to the worker's ordinary income.

The gratuity entitlement is an important element of workers' economic security, but it has several significant limitations. First, it is payable only upon termination and not as a periodic payment during the course of employment, which means that workers can accumulate a large notional entitlement during their working life but do not have access to these funds until they leave the enterprise. This structure makes the gratuity vulnerable to employer insolvency: if the employer is insolvent at the time of termination, the worker's gratuity entitlement may not be paid. Second, the gratuity formula is the same as the retrenchment compensation formula, and there is a risk that in certain circumstances the two entitlements may overlap or be treated as mutually exclusive.

The provident fund is a separate mechanism for the accumulation of retirement savings, under which the employer and the worker each contribute a specified percentage of the worker's wages to a fund that is held in the worker's name and pays interest. The provident fund creates a genuine savings mechanism that provides workers with a capital sum upon retirement or upon the end of their employment. The EPF (Employee Provident Fund) is mandatory for certain categories of employers and voluntary for others, and the administration of the fund is governed by specific rules.

The interaction between the gratuity, the provident fund, and the broader social security system raises important questions about the design of the retirement income framework for Bangladeshi workers. The existing system is fragmented, providing different forms of deferred compensation through different mechanisms with different coverage, eligibility, and benefit structures. A more rational and comprehensive approach would integrate these different mechanisms into a coherent framework that provides universal coverage and adequate income replacement for workers in retirement.

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## CHAPTER FIVE: THE DISCIPLINE OF EMPLOYMENT: MISCONDUCT, INQUIRY, AND THE DUE PROCESS TRADITION

### 5.1 Workplace Discipline as an Exercise of Power: Philosophical Foundations

The employer's power to discipline workers, including the power to impose sanctions ranging from warnings and fines to suspension, demotion, and ultimately dismissal, is one of the most significant expressions of employer authority in the employment relationship. The legal regulation of this disciplinary power is therefore one of the most important dimensions of the conditions of service framework, and it raises fundamental questions about the appropriate limits of employer authority, the rights of workers to fair treatment, and the role of procedural justice in the employment context.

The philosophical foundations of the right to procedural fairness in disciplinary proceedings connect to the broader tradition of natural justice, which holds that no person should be condemned without an opportunity to know the charges against them and to be heard in their own defence. This tradition, which has deep roots in English common law and in the principles of natural justice developed in administrative law, is directly applicable to the employment context: the worker who faces serious disciplinary sanctions, particularly dismissal, has a legitimate interest in being given a fair opportunity to respond to the charges before the sanction is imposed.

The republican political philosophy that was surveyed in Part One provides a complementary justification for procedural fairness in disciplinary proceedings. The republican account of non-domination holds that the fundamental wrong of arbitrary power is not merely the imposition of unjust outcomes but the subjection of the person to the uncontrolled will of another. A disciplinary system that allows the employer to dismiss workers without giving reasons or without allowing a response, subjects workers to exactly the kind of arbitrary power that republicanism identifies as the paradigm case of domination. Procedural fairness requirements constrain the employer's disciplinary power in ways that reduce, though they do not eliminate, the domination of workers by employers.

The capability approach developed by Amartya Sen and Martha Nussbaum provides a third foundation for procedural fairness in employment. The capability of voice, the ability to participate in the decisions that affect one's life and to have one's perspective heard and considered, is one of the central human capabilities that Nussbaum's work identifies as essential to a dignified human life. The right of the worker to participate in the disciplinary process, to be heard before sanctions are imposed, and to challenge the employer's decision through independent review, is a concrete expression of the capability of voice in the employment context.

### 5.2 The Domestic Inquiry System: Procedure, Problems, and Judicial Review

The domestic inquiry system is the primary mechanism through which allegations of worker misconduct are investigated and adjudicated in Bangladeshi law. When an employer proposes to dismiss a worker for misconduct, the BLA 2006 requires the employer to conduct a domestic inquiry, following a specific procedure that is designed to ensure that the worker has a fair opportunity to know the allegations and to respond to them.

The procedure for a domestic inquiry begins with the issuance of a charge sheet to the worker. The charge sheet must specify the allegations against the worker in sufficient detail to enable the

worker to understand and respond to them. Vague or general allegations are insufficient; the charge sheet must identify the specific acts or omissions alleged to constitute misconduct, with enough particularity that the worker can prepare a defence.

Upon receiving the charge sheet, the worker has the right to submit a written response within a specified period, typically seven to fourteen days. The worker may also request a personal hearing, at which they can present evidence and arguments in their own defence. The inquiry is conducted by an inquiry officer, who is typically a manager or officer of the employer, and who is required to conduct the inquiry impartially and to prepare a report summarising the evidence and reaching a finding on the allegations.

On the basis of the inquiry officer's report, the employer makes a decision about the appropriate sanction. Where dismissal is the proposed sanction, the employer must communicate the decision in writing to the worker, stating the reasons and the effective date of dismissal. The worker who considers the dismissal to be unfair may then seek redress through the Labour Court.

The domestic inquiry system has been the subject of extensive judicial analysis by the Labour Courts, the Labour Appellate Tribunal, and the Supreme Court. The courts have established several important principles governing the conduct of domestic inquiries. First, the principle of natural justice requires that the inquiry officer be impartial: a person who has been directly involved in the events leading to the disciplinary proceedings, or who has a personal interest in the outcome, cannot serve as the inquiry officer. Second, the worker must be given adequate time and opportunity to prepare a defence, including access to any documents or evidence that the employer intends to rely upon. Third, the findings of the inquiry must be based on the evidence produced at the inquiry, not on the employer's private knowledge or on hearsay evidence.

The Labour Courts have developed a body of case law on the standard of review applicable to domestic inquiry decisions. The general principle is that the Labour Court does not substitute its own assessment of the evidence for that of the inquiry officer; rather, it reviews the inquiry to determine whether the proper procedure was followed and whether there was sufficient evidence to support the findings. However, where the procedure was seriously defective, or where the findings were clearly contrary to the evidence, the Labour Court will intervene and may order reinstatement or compensation.

The adequacy of the domestic inquiry system as a mechanism for procedural fairness has been the subject of sustained criticism. Critics point out that the inquiry officer is appointed by and reports to the employer, creating a structural bias that undermines impartiality regardless of the individual integrity of the particular officer. The employer has complete control over the investigation, the selection of evidence, and the conduct of the inquiry, while the worker may have very limited access to legal advice or representation. In smaller establishments, the domestic inquiry may be conducted by the very person who made the initial decision to bring disciplinary charges, making the concept of an impartial hearing purely notional.

The reform of the domestic inquiry system should focus on two main areas. First, the independence of the inquiry process should be strengthened by requiring that domestic inquiries in serious cases be conducted by a person or body that is genuinely independent of management,

rather than by a management-appointed officer. In the United Kingdom, there is a practice of using independent arbitrators or agreed persons from outside the management hierarchy to conduct formal disciplinary hearings in appropriate cases, and this model could be adapted for the Bangladeshi context. Second, the worker's rights during the inquiry process should be strengthened, including the right to legal representation in serious cases, the right to cross-examine witnesses, and the right to call witnesses in their own defence.

### 5.3 The Law of Misconduct: Categories, Controversies, and Evolving Judicial Standards

The concept of "misconduct" that justifies dismissal is central to the entire disciplinary system, and its precise contours are a matter of considerable legal and practical importance. The BLA 2006 and the employer's service rules specify the categories of conduct that constitute misconduct, but these categories are often defined in broad and general terms that give the employer significant discretion in their application.

The BLA 2006, in Section 23, defines "misconduct" to include a range of acts, including wilful insubordination or disobedience to any lawful or reasonable order of a superior; theft, fraud, or dishonesty in connection with the employer's business; intentional damage to employer property; habitual late attendance; habitual negligence or neglect of work; habitual absence without leave; and riotous or disorderly conduct in the premises of the establishment. The employer's service rules may add further categories of misconduct, provided they are certified as consistent with the Act.

The category of "wilful insubordination or disobedience" is one of the most controversial elements of the misconduct definition. The breadth and vagueness of this category has made it a vehicle for employer abuse, as workers who assert their legal rights, question management decisions, or engage in organizing activities can be characterised as insubordinate. The Labour Courts have sought to limit the scope of this category by requiring that the order disobeyed must be "lawful and reasonable," meaning that an order that requires the worker to perform an illegal act or to waive their legal rights cannot ground a finding of insubordination. But the application of this limitation has been uneven, and the risk of characterising legitimate worker assertions of rights as insubordination remains a serious concern.

The category of "habitual absence without leave" is another significant source of controversy. In the garment sector, where workers frequently take leave without formal approval due to the practical difficulties of obtaining management permission, this category has been used to dismiss workers who have taken necessary absences for health or family reasons. The courts have generally required that the word "habitual" implies a pattern of repeated and unjustified absences, rather than a single instance of absence, and they have also required that the employer give the worker a fair warning before treating the absence as grounds for dismissal. But the vagueness of the concept of "habitualness" continues to create uncertainty.

The judicial development of the proportionality principle in disciplinary proceedings, which requires that the sanction of dismissal be reserved for misconduct of sufficient gravity rather than being applied to relatively minor infractions, has been an important doctrinal development. The principle draws upon the general principle of proportionality that is established in administrative

law and in human rights law, and it imposes an important constraint upon employer disciplinary discretion. The Labour Courts have held in a series of decisions that the dismissal of a long-serving employee for a first offence of a relatively minor nature is disproportionate and constitutes an unfair dismissal, entitling the worker to reinstatement or compensation.

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## CHAPTER SIX: NON-STANDARD WORK, INFORMAL LABOUR, AND THE FUTURE OF THE EMPLOYMENT CONTRACT

### 6.1 The Standard Employment Relationship and Its Discontents: Theoretical Background

The standard employment relationship (SER), which is the organizational model that has historically provided the template for labour law regulation, involves a full-time, indefinite, bilateral relationship between an employer and an employee, in which the employee works full-time for a single employer on the employer's premises, under the employer's supervision, for a fixed wage, with access to the social benefits (including occupational pension, social insurance, and statutory leave entitlements) associated with formal employment. The SER was the normative and statistical modal form of employment in the industrialised countries of the mid-twentieth century, and the architecture of labour law was built around it.

The SER has been subject to increasing erosion in virtually all labour markets, including Bangladesh's, over the past four decades. The proliferation of non-standard employment forms, including temporary work, part-time work, fixed-term contracts, agency work, independent contracting, and platform-mediated gig work, has fragmented the labour market in ways that undermine the assumptions on which the SER-based regulatory framework was built. Workers in non-standard employment often fall outside the coverage of labour law protections entirely, or receive only partial coverage, while bearing the risks of employment insecurity, variable income, and exclusion from social benefits.

The theoretical literature on non-standard work has developed several competing frameworks for understanding this phenomenon. The "labour market flexibilisation" literature, associated with the perspective of employers and some mainstream economists, characterises the shift from standard to non-standard employment as a necessary and ultimately beneficial adaptation to the changing demands of a competitive global economy, arguing that flexibility in employment arrangements benefits both employers and workers by allowing a better matching of labour supply and demand. This perspective underlies much of the policy discourse on "labour market flexibility" that has been influential in shaping the regulatory environment in which Bangladeshi labour law operates.

The "labour market precariousness" literature, associated with scholars such as Guy Standing, Arne Kalleberg, Janine Berg, and Leah Vosko, takes a sharply critical view of the shift from standard to non-standard employment. This literature argues that the proliferation of non-standard employment is not a response to workers' desires for flexibility but a deliberate strategy by capital to shift risk from employers to workers, to reduce labour costs, and to undermine workers' collective capacity for organisation and bargaining. The result is a growing "precariat"

of workers who bear the risks of market fluctuations without the security of standard employment, and who are excluded from the social rights that have historically been attached to employment.

In Bangladesh, the question of non-standard work takes a particular form that reflects the specific characteristics of the Bangladeshi economy and labour market. The majority of Bangladeshi workers are employed in the informal sector or in forms of non-standard employment that fall outside the coverage of the BLA 2006. According to ILO estimates, informal employment accounts for approximately 85 to 90 percent of total employment in Bangladesh. This means that the BLA's protections, however adequate or inadequate, are formally inapplicable to the great majority of Bangladesh's working population.

### 6.2 The Platform Economy in Bangladesh: Emerging Challenges for Labour Law

The platform economy, in which digital platforms connect service providers with customers and organise their work through algorithmic systems, is growing rapidly in Bangladesh. Ride-hailing platforms such as Pathao and Shohoz, food delivery platforms, and other digital intermediaries have created new forms of work that combine elements of employment and self-employment in ways that the existing legal framework is poorly equipped to handle.

The platform economy workers in Bangladesh, like their counterparts in other countries, are typically classified by the platforms as independent contractors, not as employees. This classification allows the platforms to avoid the obligations of employment law, including minimum wages, leave entitlements, working time limits, social security contributions, and the right to collective bargaining. The platforms argue that their workers are genuinely self-employed: they can choose when and how much to work, they use their own equipment (in most cases a motorcycle or smartphone), and they have the freedom to work for multiple platforms simultaneously.

The legal classification of platform workers has been contested in a series of landmark cases in several countries. The UK Supreme Court's decision in Uber BV v. Aslam (2021), discussed above, held that Uber drivers in the UK were "workers" within the meaning of UK employment legislation, entitled to minimum wage protection, holiday pay, and other worker rights. The Spanish Supreme Court has held similarly that Glovo food delivery riders are employees of the platform rather than independent contractors. The European Union's Platform Work Directive, adopted in June 2024, establishes a rebuttable presumption of employment for platform workers across the EU, reflecting a continental legislative judgment that the independent contractor classification of platform workers is a legal fiction that must be challenged.

These legal tests fail not because they are poorly reasoned but because they were calibrated for an economic system that no longer exists. When these legal tests were crafted, control was physical, integration was vertical, and the employer was visible. Today, control is algorithmic, integration is networked, and the employer is concealed behind platform interfaces. New York State Bar Association This analysis from recent American legal scholarship captures precisely the challenge that the platform economy poses to Bangladeshi labour law: the existing tests of

employment status, developed for the conditions of industrial employment, are poorly adapted to the conditions of algorithmic work.

The regulatory challenge of platform work in Bangladesh is compounded by the fact that the existing legal framework is already inadequate for standard industrial employment. The challenge of extending meaningful protections to platform workers, who may work for multiple platforms on an irregular basis, who may combine platform work with other economic activities, and who may be attracted to platform work precisely because of its flexibility, requires innovative regulatory thinking that goes beyond the application of the existing employment law framework.

Several models for the regulation of platform work are available from the comparative literature. The "dependent contractor" model, which creates an intermediate legal category between employee and independent contractor, extends selected labour law protections to workers who are economically dependent upon a particular platform without fully applying the employment law framework. The "portable benefits" model, associated with proposals by various American policy scholars, provides that workers accumulate benefit entitlements (to leave, social security contributions, and similar benefits) in proportion to their hours of work, regardless of who they work for, in a portable account that follows them from engagement to engagement. The "presumption of employment" model, adopted by the EU Platform Work Directive, creates a rebuttable presumption that platform workers are employees, placing the burden on the platform to demonstrate that the relationship is genuinely one of independent contracting.

Each of these models has advantages and disadvantages, and the appropriate approach for Bangladesh will depend on a careful assessment of the specific conditions of the Bangladeshi platform economy, the regulatory capacity of the enforcement apparatus, and the political economy of reform. What is clear is that the absence of any specific regulatory framework for platform work represents a significant gap in Bangladeshi labour law, one that will become increasingly significant as the platform economy continues to grow.

### 6.3 Home-Based Work, Subcontracting, and the Invisible Workforce

Home-based work, in which workers produce goods or provide services from their homes rather than in an employer's premises, has been a feature of the Bangladeshi economy since before the industrial revolution. The garment industry in particular has historically relied on home-based workers for certain stages of production, including embroidery, finishing, and quality checking. These home-based workers are typically women, working in their domestic space, paid on a piece-rate basis, and entirely excluded from the coverage of the BLA 2006.

The exclusion of home-based workers from the labour law framework reflects the organisation of the law around the factory model of employment, in which the employer-employee relationship is defined by the worker's presence on the employer's premises under the employer's direct supervision. Home-based workers, who work in their own homes, are not visible to the factory inspection system and are not captured by the legal concept of employment as ordinarily understood. They are typically classified as self-employed piece-workers or as independent

contractors, regardless of the degree of their economic dependence upon a single buyer of their labour.

The legal situation of home-based workers has been analysed by feminist labour law scholars as a classic example of the gendered exclusions of mainstream labour law. Home-based work is predominantly performed by women, and its exclusion from the labour law framework reflects the same gendered assumption that led to the exclusion of domestic work: the assumption that work performed in the home is not "real" work in the sense that deserves legal protection, but rather a natural extension of the domestic activities of women.

The ILO's Home Work Convention, 1996 (Convention No. 177), which Bangladesh has not ratified, provides the international standard for the regulation of home-based work. The Convention requires that home-based workers receive equal treatment with other employees in respect of minimum wage protection, occupational health and safety, social security, and the right to organise and bargain collectively. The Convention's approach treats home-based work as a form of employment deserving the same fundamental protections as factory employment, regardless of the place in which the work is performed.

The subcontracting chains that characterise the Bangladeshi garment industry present a related regulatory challenge. The formal employer-employee relationship that the BLA regulates is often only the final link in a long chain of subcontracting relationships that extends from the international brand at the top through the lead factory, the subcontractor factories, the sub-subcontractor workshops, and ultimately to the home-based workers at the bottom. At each link in this chain, the legal responsibility for compliance with labour standards shifts downward, while the economic power to determine wages and conditions remains concentrated at the top of the chain.

This fragmentation of legal responsibility through subcontracting chains is a deliberate strategy by brand companies to distance themselves from the labour practices of their suppliers while continuing to exercise economic control over those practices through their purchasing decisions and production specifications. The legal response to this strategy requires the development of supply chain liability frameworks that can hold lead companies responsible for the labour practices of their suppliers, regardless of the formal legal independence of the supplier companies.

The development of supply chain liability in Bangladeshi law is in its early stages. The BLA 2006 contains some provisions on the liability of principal employers for the labour standards of contractors, but these provisions are limited in scope and weakly enforced. The development of a more comprehensive supply chain liability framework, inspired by emerging international models such as the French Devoir de Vigilance law, the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz), and the EU Corporate Sustainability Due Diligence Directive, represents an important frontier for Bangladeshi labour law reform.

# CHAPTER SEVEN: EMPLOYER OBLIGATIONS, IMPLIED DUTIES, AND THE CONCEPT OF GOOD FAITH IN EMPLOYMENT

## 7.1 The Employer's Fundamental Obligations: A Common Law Analysis

The employment contract imposes not only express obligations on both parties but a range of implied obligations that have been developed by the courts over time to fill gaps in the express agreement and to give effect to the fundamental purposes of the employment relationship. The employer's implied obligations are particularly important for the legal analysis of conditions of service, because they impose substantive requirements on employers that go beyond the minimum standards established by legislation.

The employer's implied duty to pay wages is the most basic and obvious implied obligation: if the employer fails to pay wages, they are in fundamental breach of the employment contract. But the implied obligations extend far beyond this simple duty. The employer is impliedly obliged to provide a safe system of work, a duty that was established by the English courts in the nineteenth century and that has since been elaborated into a comprehensive body of occupational health and safety law. The employer is impliedly obliged to provide references in certain circumstances, though this obligation is qualified by the right to give honest references that may be adverse to the worker. And the employer is impliedly obliged to maintain the mutual trust and confidence that is the foundation of the continuing employment relationship.

The implied duty of mutual trust and confidence has been the most significant development in the common law of the employment contract in the second half of the twentieth century. As developed by the English courts, this duty imposes on the employer an obligation not to conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence that must exist between the parties to the employment relationship. This is a broad and flexible duty that has been applied in a wide range of circumstances, including the employer's handling of employees' grievances, their management of performance and disciplinary processes, and their response to employees' concerns about health and safety.

The duty of mutual trust and confidence has important implications for the analysis of conditions of service in Bangladesh. If this duty is recognised as a term of the employment contract under Bangladeshi law, it would impose on employers a range of obligations that go significantly beyond what the express provisions of the BLA and the individual contract require. It would, for example, require employers to deal honestly and transparently with workers in disciplinary proceedings, to take workers' health and safety concerns seriously, and to maintain working conditions that do not destroy the fundamental relationship of trust that employment presupposes.

The extent to which the duty of mutual trust and confidence has been received into Bangladeshi law is uncertain. The Bangladeshi courts have not explicitly adopted the English formulation of the duty, and the statutory framework of the BLA provides only limited textual support for it. However, there are good arguments for the development of a similar principle in the Bangladeshi context, grounded in the constitutional principle of the dignity and worth of all persons, the

general principle of good faith in contractual relationships under the Contract Act, 1872, and the protective purposes of the BLA.

### 7.2 The Employer's Duty of Care: Occupational Health, Safety, and Welfare

The employer's common law duty of care to employees in relation to their health and safety at work is one of the most well-established implied obligations in employment law. The duty requires the employer to take reasonable care to provide safe premises, a safe system of work, competent fellow employees, and adequate materials and equipment. This duty coexists with the statutory occupational health and safety obligations established in the BLA and the Labour Rules, and it provides workers with an additional basis for legal action where the employer's failure to provide a safe working environment causes injury or illness.

In Bangladesh, the relationship between the common law duty of care and the statutory framework of occupational health and safety is complex. The BLA 2006 contains Chapter VIII on health, hygiene, and safety, which establishes a range of specific occupational health and safety obligations. These provisions are supplemented by the Occupational Safety, Health and Welfare Rules, 2020, which provide detailed technical standards for workplace safety in different industrial sectors. The enforcement of these standards is the responsibility of the Department of Inspection for Factories and Establishments.

The common law duty of care, which operates independently of the statutory framework, can be a significant additional resource for workers who suffer injury or illness as a result of their employer's negligence. Under the Workers' Compensation system established by the BLA, injured workers are entitled to compensation according to a statutory schedule, but this compensation may be inadequate where the injury is severe or where the worker's loss of earnings is not fully captured by the statutory formula. The common law action for damages, which allows the worker to sue for full compensation including loss of earnings, medical expenses, pain and suffering, and future care costs, may provide more adequate compensation in serious cases.

The development of workplace safety jurisprudence in Bangladesh has been significantly shaped by the Rana Plaza disaster and its aftermath, as discussed in Part One. The judicial and legislative response to Rana Plaza has established a strong normative commitment to workplace safety in the garment industry, and the Bangladesh Accord and International Accord have developed sophisticated institutional mechanisms for ensuring compliance with safety standards. But the principles established in the garment sector need to be extended more broadly to all sectors of the economy, including construction, agriculture, and the informal manufacturing sector.

### 7.3 Confidentiality, Non-Competition, and Post-Employment Restraints

The employment contract in Bangladesh, like employment contracts in other common law jurisdictions, may contain express terms imposing obligations of confidentiality and non-competition on the worker, both during and after the employment. These terms raise important

questions about the appropriate limits of the employer's ability to restrict the worker's economic freedom and mobility after the employment relationship ends.

The law on post-employment restraints in Bangladesh is governed primarily by the general law of contract, particularly Section 27 of the Contract Act, 1872, which provides that every agreement by which any person is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. This provision, which is based on the general principle of freedom of trade and freedom of contract, has been interpreted by the Bangladeshi courts to impose a strict standard on the enforceability of non-competition clauses: such clauses are void unless they fall within the specific exceptions recognised by the courts.

The courts have recognised that reasonable restraints of trade imposed during the course of employment, where the employee is working exclusively for the employer and is being paid for their services, are permissible. But post-employment non-competition clauses, which restrict the former employee's ability to work in their field after leaving the employer, are subject to much stricter scrutiny. The courts have generally held that such clauses are void under Section 27 unless they are narrowly limited in scope, geography, and duration, and unless they protect a genuine legitimate business interest of the employer, such as trade secrets or specially trained key employees.

The tension between the employer's legitimate interest in protecting confidential information and trade secrets on the one hand, and the worker's freedom to earn a living and to use their skills and knowledge on the other hand, is a perennial theme of employment law jurisprudence. The philosophical case for strong worker mobility is grounded in the broader principle of economic freedom and the worker's right to deploy their labour power in the market to the best advantage. The philosophical case for some protection of employer information is grounded in the principle that the employer has a legitimate interest in protecting the investment made in developing confidential processes, customer relationships, and trade secrets.

The appropriate balance between these competing interests depends on a careful analysis of the specific circumstances of each case, and on the development of a more nuanced legal framework than the current blunt instrument of Section 27's blanket prohibition. The development of specific legislation on confidentiality and non-competition in employment, drawing upon the experience of other jurisdictions, would provide a more adequate framework for resolving these tensions in a way that protects genuine employer interests while preserving worker mobility.

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## CHAPTER EIGHT: THE RIGHT TO DIGNITY, EQUALITY, AND NON-DISCRIMINATION IN THE CONDITIONS OF SERVICE

### 8.1 Non-Discrimination in Employment: Constitutional Foundations and Statutory Framework

The principle of non-discrimination in employment is one of the fundamental principles of international labour law, recognised in ILO Convention No. 111 (Discrimination (Employment

and Occupation) Convention, 1958), which Bangladesh has ratified. The Convention defines discrimination as any distinction, exclusion, or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

The constitutional foundation of non-discrimination in employment in Bangladesh is Article 28 of the Constitution of Bangladesh, 1972, which prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Article 29 of the Constitution further provides that there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic, and prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.

The BLA 2006 does not contain a comprehensive general prohibition on discrimination in employment; rather, it addresses specific forms of discrimination in specific contexts. The Act prohibits discrimination against women in wage payment (equal pay for equal work), restricts night work for women workers, and provides specific protections for women in relation to maternity benefits. The 2025 amendment strengthened the protections against workplace violence and harassment, including gender-based harassment, and defined sexual harassment as a prohibited form of conduct.

The absence of a comprehensive anti-discrimination framework in the BLA is a significant gap in the legal protection of workers' rights. Workers who experience discrimination on grounds other than those specifically addressed in the Act, including discrimination on grounds of religion, caste, disability, or HIV status, have limited legal recourse under the existing statutory framework. The development of a comprehensive employment equality law, modeled on the employment equality frameworks of the EU member states and other jurisdictions with advanced anti-discrimination systems, represents an important agenda item for labour law reform.

### 8.2 Gender Discrimination and the Equal Pay Principle

Gender discrimination in employment is one of the most pervasive and documented forms of labour market inequality in Bangladesh. Women workers are concentrated in the lowest-paid and least-skilled categories of employment, face systematic barriers to promotion and access to higher-paid work, and are subjected to pay discrimination even where they perform the same work as male colleagues.

The equal pay principle in Bangladesh is established in Section 345 of the BLA 2006, which provides that a female worker shall receive the same remuneration as a male worker for the same work or for work of equal value. This provision gives statutory expression to the principle of equal pay for equal work that is recognised in ILO Convention No. 100 (Equal Remuneration Convention, 1951), which Bangladesh has ratified.

However, the practical effectiveness of the equal pay provision is limited by several factors. First, the provision applies to remuneration for "the same work or work of equal value" but provides no mechanism for determining when work is of equal value, and the concept of "equal value" is inherently contested and requires sophisticated analytical tools (job evaluation

methodologies) that are not widely available. Second, the enforcement of the equal pay provision requires workers to bring individual complaints, which involves the costs, delays, and risks of litigation that effectively deter most workers from asserting their rights. Third, much of the gender pay gap in Bangladesh is not the result of explicit pay discrimination but of occupational segregation, which concentrates women in lower-paid occupations and job categories, a form of structural inequality that the equal pay provision does not directly address.

The feminist legal analysis of equal pay law distinguishes between the formal equality approach, which simply requires that workers in the same job be paid the same regardless of gender, and the substantive equality approach, which requires a more thorough examination of the structural conditions that produce gender wage inequality. The formal equality approach is inadequate on its own, because it leaves untouched the structures of occupational segregation, access to promotion, and cultural devaluation of women's work that produce the overall gender wage gap. A more adequate approach would require both equal pay for the same work and a systematic examination of the structures that produce gender wage inequality across the labour market.

### 8.3 Discrimination Against Persons with Disabilities: A Critical Gap

The legal protection of persons with disabilities in employment is one of the most significant gaps in the Bangladeshi labour law framework. Persons with disabilities face severe barriers to employment in Bangladesh, including inaccessible workplaces, employer discrimination, and the absence of legal obligations to provide reasonable accommodation. The BLA 2006 contains no specific provisions on the employment of persons with disabilities or on the employer's obligation to make reasonable accommodation.

The international standard on the rights of persons with disabilities in employment is established in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Bangladesh ratified in 2007, and in the ILO's Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (Convention No. 159), which Bangladesh has not ratified. The CRPD requires states parties to prohibit discrimination on the basis of disability in employment, to protect the right of persons with disabilities to work on an equal basis with others, and to require employers to provide reasonable accommodation to persons with disabilities.

The Persons with Disabilities Rights and Protection Act, 2013, which is the primary domestic legislation addressing the rights of persons with disabilities, contains some provisions on employment, including a quota for the employment of persons with disabilities in public sector employment and a general prohibition on discrimination in employment. However, the Act's provisions are weakly enforced and have had limited practical effect on the employment prospects of persons with disabilities in Bangladesh.

The development of stronger legal protections for persons with disabilities in employment, including a comprehensive requirement of reasonable accommodation, effective enforcement mechanisms, and awareness-raising campaigns for employers, is an important dimension of a comprehensive labour law reform agenda that takes seriously the principle of equal dignity and worth of all persons.

# CHAPTER NINE: THE POLITICAL ECONOMY OF INDIVIDUAL LABOUR RIGHTS: IMPLEMENTATION GAPS AND STRUCTURAL BARRIERS

## 9.1 The Gap Between Law on Paper and Law in Action: Understanding Systematic Non-Compliance

The most important theoretical and practical question about the conditions of service framework in Bangladesh is not whether the law's provisions are adequate (though that is an important question) but why there is such a systematic and persistent gap between the law as written and the law as actually experienced by workers. This gap between law on paper and law in action is not unique to Bangladesh; it is a pervasive phenomenon in developing countries with formal legal frameworks that exceed the capacity of the state and of workers' organisations to enforce them. But in Bangladesh, the gap is particularly wide and particularly consequential.

Understanding the gap between legal text and legal reality requires attention to several distinct levels of analysis. At the most immediate level, there is the problem of information: workers who do not know their legal rights cannot assert them, and the available evidence consistently finds that Bangladeshi workers have very limited knowledge of the specific provisions of the BLA and the legal rights it confers. The legal consciousness research reviewed in Part One suggests that most garment workers know they have some legal rights in general terms but cannot identify the specific provisions that define those rights or the legal mechanisms available to enforce them.

At the second level, there is the problem of access to justice: even workers who know their rights face formidable practical obstacles to asserting them through the formal legal system. The Labour Court system is slow, expensive, and inaccessible. The alternative dispute resolution mechanisms introduced by the 2025 amendment have the potential to improve access, but their implementation is at an early stage and their effectiveness remains to be demonstrated. The availability of legal aid for workers is extremely limited. And the risk of retaliation for asserting legal rights creates a powerful deterrent that operates even among workers who know their rights and could in theory access the legal system.

At the third level, there is the structural problem of employer power. The ability of employers to dismiss workers, to deny them employment, to blacklist them among other employers, and to subject them to physical intimidation creates a background of threat that makes the formal assertion of legal rights extremely risky for individual workers. This structural power of employers is not simply a product of individual employer misconduct; it is the systematic product of a labour market in which workers have few alternatives to any particular employment and in which the collective power of workers is systematically suppressed. The Bangladesh Labour (Amendment) Bill 2026 includes new provisions to protect workers and trade union members from unfair labour practices and anti-trade union discrimination, prohibiting employers from blacklisting workers or trade union members, establishing trade unions under employer control, or providing financial or other support to influence trade union activities. Dhaka Tribune These new provisions represent a significant advance, but their practical effectiveness will depend on robust enforcement.

At the fourth level, there is the problem of state capacity and political will. The enforcement apparatus of the Bangladeshi state, including the Department of Inspection for Factories and Establishments, the Labour Courts, and the administrative machinery of the Ministry of Labour and Employment, is seriously under-resourced relative to the scale of its mandate. The number of labour inspectors, the quality of their training, the independence of the inspection process from political and employer influence, and the adequacy of the information management systems are all significantly below what is needed for effective enforcement of the conditions of service framework.

### 9.2 Political Economy of Employer Compliance: Incentives, Sanctions, and the Business Case for Compliance

The analysis of employer compliance with the conditions of service framework requires attention to the economic incentives that shape employer behaviour. Employers who comply with all the provisions of the BLA incur significant costs: the cost of the minimum wage, the cost of leave entitlements, the cost of gratuity and retrenchment compensation, the cost of occupational safety measures, and the cost of the administrative compliance requirements. Employers who violate these provisions avoid these costs and thereby obtain a competitive advantage over compliant employers.

This creates a classic problem of regulatory economics: in the absence of effective enforcement, compliant employers are penalised relative to non-compliant employers, creating a "race to the bottom" dynamic in which competitive pressure drives employers toward non-compliance. The solution to this problem requires a combination of sufficiently high penalties for non-compliance, sufficiently probable detection through effective inspection, and a legal framework that makes non-compliance legally risky and economically unprofitable.

The penalties for non-compliance established in the BLA 2006 have historically been too low to constitute an effective deterrent. The maximum fines prescribed in the Act are, in many cases, so small relative to the costs of compliance that they make economic sense for employers to pay the fine and continue to violate the law. The 2025 amendment has increased some penalties, but the adequacy of the new penalty levels relative to the costs of non-compliance remains a question that requires careful empirical analysis.

The probability of detection through labour inspection is another critical variable. With the number of inspectors available to DIFE relative to the number of establishments subject to inspection, the probability that any particular establishment will be inspected in any particular year is very low. This low probability of inspection significantly undermines the deterrent effect of even substantial penalties, because the expected cost of a violation (probability of detection multiplied by the penalty) remains far below the cost of compliance.

The "business case" for compliance, which some commentators have argued is an important complement to regulatory enforcement, rests on the argument that good labour practices are in the long-run interest of employers because they reduce turnover, improve productivity, enhance the employer's reputation with international buyers, and reduce the risk of costly industrial disputes. There is some empirical evidence supporting elements of this argument, particularly in

the garment sector where international brand buyers have increasingly required suppliers to demonstrate compliance with labour standards. But the business case argument is limited in its practical significance because it operates on a long time horizon and in competitive conditions where individual employers face strong incentives to free ride on the compliance of others.

### 9.3 Supply Chain Accountability and the Responsibilities of International Buyers

The conditions of service of Bangladeshi workers are shaped not only by domestic law and domestic labour market conditions but by the decisions of international brands and buyers who purchase from Bangladeshi manufacturers. The international brands that source from Bangladesh wield enormous economic power over their Bangladeshi suppliers: they set the prices at which they buy, the quality standards they demand, the delivery schedules they require, and increasingly, the labour standards they expect their suppliers to comply with. The prices paid by brands to their Bangladeshi suppliers are a critical determinant of the wages and conditions that suppliers can afford to pay their workers.

Research by economists and labour scholars has consistently found that the price pressure imposed by international brands on their suppliers is a significant driver of the working conditions in supplier factories. When brands squeeze prices, suppliers are under pressure to cut costs, and the most readily cuttable costs in a labour-intensive garment factory are labour costs, including wages, overtime pay, and leave entitlements. The race to the bottom in procurement prices is directly connected to the race to the bottom in working conditions.

This analysis supports the argument that improving the conditions of service of Bangladeshi workers requires not only stronger domestic regulation and enforcement but also changes in the procurement practices of international brands. Brands that require their suppliers to meet certain labour standards while simultaneously demanding prices that make compliance with those standards economically impossible are practicing a form of hypocrisy that has been well documented in the supply chain accountability literature. The development of legal frameworks that hold brands accountable for the working conditions in their supply chains, including through mandatory human rights due diligence requirements, is therefore a necessary complement to domestic labour law reform.

The developments in supply chain due diligence legislation in Europe, including the German Supply Chain Due Diligence Act (which came into force in January 2023 and extends to all companies with 1000 or more employees in Germany, with supply chains in countries like Bangladesh) and the EU Corporate Sustainability Due Diligence Directive (adopted in 2024), represent a significant development in this direction. These laws impose obligations on companies to identify, prevent, and remedy human rights and environmental violations in their supply chains, including violations of labour standards. Their potential impact on the conditions of service of Bangladeshi garment workers is significant, though the precise mechanisms through which they will affect conditions on the ground remain to be worked out.

# CHAPTER TEN: JURISPRUDENTIAL SYNTHESIS AND REFORM AGENDA FOR PART TWO

## 10.1 The Employment Contract as a Site of Continuing Constitutional Struggle

The analysis presented in this second part of the textbook has revealed the employment contract and the conditions of service framework as a complex site of legal, political, and philosophical struggle. The struggle over the terms on which human beings sell their labour power is not merely a technical legal dispute about the proper interpretation of statutory provisions; it is a continuing contest over the distribution of power and resources in society, mediated through the legal form of the employment contract.

The constitutional dimension of this struggle is fundamental. The Constitution of Bangladesh, 1972, establishes a framework of fundamental rights that includes the right to equal protection of the law, the right to freedom of association, the right to the dignity and worth of the person, and the Fundamental Principles of State Policy that commit the state to the improvement of the conditions of workers. These constitutional provisions provide the normative framework within which the statutory framework of the BLA must be interpreted and assessed. And they provide the basis for a constitutional jurisprudence of employment rights that goes beyond the mere interpretation of statutory provisions to ask whether the statutory framework, and the practices that it regulates or fails to regulate, are consistent with the constitutional commitment to human dignity and equal protection.

The High Court Division's exercise of constitutional review in labour cases, including landmark decisions such as the BNWLA judgment on sexual harassment, the decisions on the constitutionality of the EPZ labour regime, and the decisions on the enforcement of minimum wage obligations, represents an important dimension of the constitutional struggle over conditions of service. These decisions demonstrate that the judiciary can play a significant role in elaborating and enforcing the constitutional dimensions of workers' rights, particularly where the legislature has failed to provide adequate statutory protection.

The jurisprudential tradition of reading statutes purposively, in light of their protective purposes and the constitutional principles that underlie them, is essential to the effective judicial enforcement of conditions of service. Courts that read the BLA's provisions narrowly and technically, looking only at the literal text, will often find ways to limit the scope of statutory protections in ways that serve employer interests. Courts that read the provisions purposively, asking what the legislative purpose of the protection is and how that purpose can be best served in the circumstances of the particular case, will be more likely to give effect to the genuine protective intent of the legislation.

## 10.2 Philosophical Conclusions: Dignity, Security, and the Future of the Employment Relationship

The philosophical analysis of the employment contract and the conditions of service framework points toward several normative conclusions that should inform the reform agenda. The most fundamental conclusion is that the employment relationship is not merely a private contractual

exchange but a social institution that affects the dignity, security, and freedom of millions of human beings, and that the law's regulation of this institution must be oriented toward the protection of those fundamental human interests.

The capability approach provides a particularly useful framework for assessing the adequacy of the conditions of service framework. Nussbaum's list of central human capabilities includes: bodily health, including adequate nutrition and shelter; bodily integrity, including freedom from assault and the ability to move freely; the ability to use the senses, to imagine, think, and reason; emotional development; practical reason, including the ability to form a conception of the good and to engage in critical reflection; affiliation with other humans and being able to work as a human being; play; and control over one's political and material environment. The conditions of service framework is adequate, on the capability approach, only if it ensures that workers are able to develop and exercise these capabilities in their working lives.

Assessed against this standard, the conditions of service framework of the BLA 2006, even after the 2025 and 2026 amendments, falls significantly short of adequacy. The minimum wage is insufficient to enable workers to meet their basic material needs. The leave provisions, even if fully observed, provide insufficient time for the development of the social, cultural, and personal capabilities that human flourishing requires. The disciplinary provisions permit the employer to exercise extensive authority over the worker's working life without adequate procedural safeguards. And the exclusion of large categories of workers from the framework's coverage leaves many of the most vulnerable workers entirely without protection.

The republican political philosophy of non-domination provides a complementary framework. The employment relationship, as currently structured in Bangladesh, involves an extreme degree of domination: workers are subject to the arbitrary will of their employers in virtually every dimension of their working lives, with little effective legal constraint on the employer's authority. The reform of the conditions of service framework should aim not merely to improve specific statutory provisions but to reduce the structural domination of workers by employers through stronger collective rights, more effective enforcement, and a broader commitment to the redistribution of power in the employment relationship.

### 10.3 A Comprehensive Reform Blueprint for Individual Labour Rights in Bangladesh

On the basis of the analysis presented in this second part, the following reforms are necessary to create a conditions of service framework that genuinely protects the rights and interests of Bangladeshi workers.

First, the definition of "worker" should be progressively extended to cover all categories of working people, including agricultural workers, home-based workers, platform workers, and other categories currently excluded or inadequately covered. The extension of coverage must be accompanied by the development of specific regulatory frameworks tailored to the specific conditions of each category, rather than the mechanical application of the industrial employment model to all forms of work.

Second, the written appointment letter requirement should be strictly enforced through enhanced inspection and significant penalties for non-compliance. Every worker must receive a written statement of the terms of their employment from the first day of work, and this statement must be in a language they can understand.

Third, the minimum wage-setting process should be fundamentally reformed to introduce automatic indexation to a cost-of-living index, to strengthen worker representation on the Minimum Wages Board, and to commit the government to a progressive pathway toward achieving the living wage. The political economy of minimum wage setting should be changed to reduce the influence of employer interests and to give genuine weight to the interests of workers in determining the wage floor.

Fourth, the conditions of service framework should be extended to provide stronger protection for workers in non-standard employment, including a statutory definition of the "dependent contractor" or "worker" category that extends minimum wage, working time, and other core protections to workers who are economically dependent upon a single principal, regardless of how their relationship is formally characterised.

Fifth, the domestic inquiry system should be fundamentally reformed to ensure genuine procedural fairness in disciplinary proceedings, including independent inquiry officers, the right to legal representation in serious cases, stronger judicial oversight, and a more robust proportionality requirement.

Sixth, the retrenchment compensation formula should be significantly enhanced and complemented by a system of unemployment insurance that provides income replacement for workers who lose their employment through no fault of their own. The current system, which leaves retrenched workers with only a modest lump sum payment and no continuing income support, is inadequate to the standard required by the principle of economic security as a social right.

Seventh, a comprehensive employment equality law should be enacted that prohibits discrimination on all relevant grounds, including gender, disability, religion, caste, ethnicity, HIV status, and sexual orientation, and that requires employers to make reasonable accommodation for workers with disabilities and other relevant needs. The equal pay principle should be extended and made more effective through the development of job evaluation methodologies and effective enforcement mechanisms.

Eighth, the framework for supply chain accountability should be developed to impose obligations on lead companies and international buyers to conduct due diligence on the labour practices of their suppliers and to be liable for contribution to the remediation of violations that occur in their supply chains.

Ninth, a comprehensive legal framework for platform work should be developed, drawing on the EU Platform Work Directive and other international models, that provides platform workers with access to minimum wage protection, social security coverage, and collective bargaining rights,

while recognising the legitimate desire of many platform workers for flexible working arrangements.

Tenth, and most fundamentally, the enforcement apparatus for the conditions of service framework must be dramatically strengthened through massive investment in labour inspection, through the development of an independent and well-resourced Labour Court system with adequate capacity to deliver timely justice, and through the development of effective legal aid services that make the legal system genuinely accessible to all workers regardless of their economic resources.

These reforms, taken together, would represent a comprehensive transformation of the conditions of service framework from what is currently an inadequate and systematically unenforced set of minimum standards into a genuine framework of economic security, dignity, and democratic participation for all working people in Bangladesh. They would require sustained political will, significant public investment, and a fundamental rebalancing of the political economy of labour regulation. They are ambitious, but they are also, in the view of this analysis, both necessary and achievable. The question is whether the political conjuncture created by the July Revolution of 2024 and the subsequent reforms provides the momentum for this deeper transformation.

## 10.4 The Constitutional Dimension of Reform: Making Rights Real

The reforms proposed above are not simply technical statutory changes; they are, at their deepest level, a project of constitutional transformation. The constitutional commitment of the Bangladesh state to the dignity and worth of all persons, to the equal protection of the law, and to the improvement of the conditions of working people, requires a conditions of service framework that is not merely formal but genuinely effective. The gap between the constitutional commitment and the legislative reality is a constitutional problem, not merely a statutory one, and it demands a constitutional response.

The High Court Division's public interest jurisdiction under Article 102 of the Constitution provides one mechanism through which the constitutional dimensions of conditions of service can be enforced. Where the government has failed to enact legislation necessary to give effect to constitutional rights, or where the existing legislation is demonstrably inadequate to protect constitutional guarantees, the High Court Division can be petitioned to issue directions requiring legislative or executive action. This use of public interest litigation as a mechanism for promoting constitutional compliance with labour rights has precedent in the BNWLA judgment and in other decisions of the High Court Division in social and economic rights cases.

Beyond litigation, the constitutional transformation of conditions of service requires a broader project of legal and political culture change. It requires that lawmakers, administrators, judges, and employers internalise the constitutional commitment to workers' dignity and rights as a genuine constraint on their discretion, rather than as a rhetorical flourish to be invoked and then ignored. It requires that workers develop a stronger legal consciousness of their constitutional rights and a greater capacity to assert those rights collectively. And it requires that civil society organisations, legal academics, and international partners continue to provide the analytical, advocacy, and technical resources necessary to sustain the long project of labour law reform.

The philosophical traditions surveyed in this Part and in Part One all converge on one fundamental conclusion: the employment relationship is a human relationship between persons of equal moral worth, and the law's regulation of that relationship must reflect this equality of worth in its substantive provisions, its enforcement mechanisms, and its institutional arrangements. The achievement of this standard, in Bangladesh as elsewhere, is a goal that is always partially achieved and always partially unfinished. The purpose of labour law scholarship, and of this textbook, is to keep the gap between the achieved and the possible perpetually in view, and to insist that what is morally required can and must be made legally real.

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## BIBLIOGRAPHIC NOTES FOR PART TWO

The analysis in this second part draws upon a range of primary sources, including the Bangladesh Labour Act, 2006 (as amended through 2026), the Bangladesh Labour Rules, 2015, the relevant decisions of the Labour Courts and the Supreme Court of Bangladesh, and the publications of the ILO and the Bangladesh Employers' Federation. The commentary on the Bangladesh Labour (Amendment) Ordinance, 2025 published by the Bangladesh Law Digest in March 2026 provides the most comprehensive publicly available analysis of the specific amendments.

On the common law of the employment contract, the standard English text remains Simon Deakin and Gillian Morris, Labour Law (8th edition, Hart Publishing, 2021), which provides an authoritative analysis of the common law and statutory framework. The classic treatment of the history of the employment contract from master and servant is found in Robert Steinfeld, Coercion, Contract, and Free Labor in the Nineteenth Century (Cambridge University Press, 2001). The historical evolution of the employment contract in British India is analysed in Prabhu Mohapatra's work on colonial labour law.

On the philosophy of the employment contract, the essays collected in Collins, Lester, and Mantouvalou, Philosophical Foundations of Labour Law (Oxford University Press, 2018) provide the most comprehensive contemporary survey. Philip Pettit's Republicanism: A Theory of Freedom and Government (Oxford University Press, 1997) provides the theoretical foundations of the republican analysis of non-domination, while Alan Bogg's work on collective labour law, particularly The Democratic Aspects of Trade Union Recognition (Hart Publishing, 2009) and the co-edited volume with Tonia Novitz, Voices at Work (Oxford University Press, 2014), develops the republican approach in the labour law context.

On the platform economy and gig work, the most comprehensive recent scholarship includes Jeremias Adams-Prassl's Humans as a Service: The Promise and Perils of Work in the Gig Economy (Oxford University Press, 2018), Valerio de Stefano's work on the future of work and non-standard employment published by the ILO, and the growing body of literature on the EU Platform Work Directive and its implications. The UK Supreme Court's decision in Uber BV v. Aslam [2021] UKSC 5 is essential reading for understanding the judicial approach to platform worker classification.

On the feminist analysis of conditions of service, Joanne Conaghan's work is essential, particularly her essay collection Law and Gender (Oxford University Press, 2013) and the co-edited volume with Kerry Rittich, Labour Law, Work and Family (Oxford University Press, 2005). Judy Fudge's extensive scholarship on the standard employment relationship, feminist labour law, and the regulation of domestic work provides crucial theoretical resources for the analysis of the Bangladeshi context.

On the comparative framework for employment security, the ILO's Termination of Employment Convention, 1982 (Convention No. 158) and its accompanying Recommendation (No. 166) provide the international standards. The comparative study by Andrzej Swiatkowski on European Employment Laws (Kluwer Law International) provides useful comparative material on the employment security framework in advanced labour law jurisdictions.

On minimum wages, the foundational empirical work of Card and Krueger, reported in their 1994 American Economic Review article and their book Myth and Measurement: The New Economics of the Minimum Wage (Princeton University Press, 1995), remains essential. The more recent comprehensive survey of minimum wage research by Arindrajit Dube, including his 2019 report for the UK government on the economics of the minimum wage, provides an authoritative overview of the current state of the empirical literature.

The ILO's publications on conditions of service, including the reports of the Committee of Experts on the Application of Conventions and Recommendations specifically concerning Bangladesh, the Bangladesh Labour Market Profiles published by the Danish Trade Union Development Agency, and the Global Living Wage Coalition's estimates for the garment industry in Bangladesh, provide essential empirical grounding for the analysis of conditions of service in the Bangladeshi context.

On the supply chain dimensions of conditions of service, the report of the Special Rapporteur on the right of everyone to the enjoyment of the just and favorable conditions of work (Report A/74/198, 2019) on decent work and the realisation of economic rights in the context of global value chains is an important international human rights framework document. The developing literature on the EU Corporate Sustainability Due Diligence Directive and its implications for supply chain labour practices, including work by Martijn Scheltema, Geert van Calster, and the Oxford Business Law Blog commentary, provides the comparative context for thinking about supply chain accountability in the Bangladeshi situation.

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*End of Part Two*

*Part Three will examine the political economy of minimum wages in Bangladesh in depth, including the controversial 2023 minimum wage revision in the garment sector, the theoretical debates about the effects of minimum wages on employment and productivity, the development of the living wage concept and its implications for Bangladeshi labour law, and the reform of the minimum wage-setting process in light of the recommendations of the Labour Reform Commission.*

*This textbook is dedicated to the workers of Bangladesh, whose labour builds the clothing worn by hundreds of millions across the world, and whose rights deserve the full protection of a just and effective legal order.*

# PART THREE: THE POLITICAL ECONOMY OF WAGES, MINIMUM WAGE LAW, AND THE JURISPRUDENCE OF JUST REMUNERATION IN BANGLADESH

## PREFATORY NOTE TO PART THREE

The question of wages is, in the most fundamental sense, the question of what human labour is worth and who has the authority to determine that worth. It is simultaneously a question of political economy, of legal philosophy, of constitutional architecture, and of practical justice. In Bangladesh, it is also a question that has been answered, repeatedly, in ways that systematically undervalue the labour of millions of working people who produce a significant share of the clothing worn by consumers across the industrialized world.

Part Three of this textbook examines the law of minimum wages in Bangladesh with the same depth of philosophical engagement, historical investigation, and critical legal analysis that characterized the earlier parts. The present part proceeds from the theoretical foundations of wage-setting jurisprudence through the detailed historical evolution of minimum wage law in the subcontinent, to the specific controversies surrounding the 2023 revision of the garment sector minimum wage and the subsequent developments under the interim government that assumed power following the July Revolution of 2024. It examines the contested relationship between the minimum wage and the living wage, the political economy of minimum wage-setting in a competitive export economy, and the theoretical debates about the employment effects of minimum wage legislation. And it concludes with a comprehensive reform blueprint grounded in the philosophical and jurisprudential analysis that runs throughout the text.

The analysis is conducted in the awareness that the minimum wage question in Bangladesh is not merely a technical legal or economic problem. It is a problem about power, about who controls the conditions of production, about the relationship between domestic labour law and the global political economy of fast fashion, and about the capacity of law to transform, rather than merely legitimate, relations of exploitation. The philosophical seriousness that these questions deserve will not be sacrificed to the demands of technical precision, though technical precision will be maintained wherever it is necessary.

## CHAPTER ELEVEN: THE PHILOSOPHY AND JURISPRUDENCE OF JUST WAGES: FROM ARISTOTLE TO THE GLOBAL LIVING WAGE COALITION

### 11.1 The Ancient Foundations: Just Price, Just Wage, and the Moral Economy of Antiquity

The idea that wages must be just, that human labour is not merely a commodity whose price is determined by supply and demand, but a fundamental expression of human dignity that commands a moral minimum, is not a modern invention. Its roots reach back to the earliest systematic reflections on the organization of economic life in human societies, to Aristotle's account of distributive justice, to the medieval doctrine of the just price, and to the natural law tradition that shaped both Catholic social teaching and the secular jurisprudence of the modern West.

Aristotle's analysis of distributive justice in the Nicomachean Ethics and the Politics provides the philosophical foundation for the entire subsequent tradition of thinking about just remuneration. Aristotle's central claim is that justice in distribution requires that benefits and burdens be allocated in proportion to merit or worth. Applied to wages, this principle suggests that workers deserve to receive in proportion to the value of their contribution, and that wages that bear no proportional relationship to the actual value of work performed are, in some sense, unjust. But Aristotle's account is complicated by his treatment of the different forms of value and the different criteria of merit that apply in different spheres of social life. In the sphere of economic exchange, Aristotle recognized that the standard of just exchange requires equality, the exchange of things of equal value, and that exploitation occurs when one party systematically receives less than the value of what they contribute.

More directly relevant to the labour law context is Aristotle's discussion of slavery in the Politics, and the implicit contrast he draws between the free worker and the slave. Aristotle treated slavery as a natural institution, a philosophical position that is, of course, entirely indefensible. But the very structure of his argument reveals an implicit recognition that the labour relationship is characterized by a fundamental inequality of power that requires moral justification, an insight that remains relevant to the analysis of wage labour even in a formally free society. The question that Aristotle's framework poses, and that subsequent philosophy has struggled to answer, is what moral justification can be offered for a system in which workers receive wages that are systematically insufficient for a decent life, and what obligations this insufficiency imposes on employers, the state, and the broader society.

The medieval doctrine of the just price, developed by the scholastic philosophers of the twelfth through sixteenth centuries, including Thomas Aquinas, Duns Scotus, and their successors, applied to the price of labour as well as to the prices of goods. The just price, in the scholastic tradition, was not simply the market price determined by supply and demand; it was the price that reflected the true value of the thing exchanged and that permitted the seller to maintain his social status and meet his obligations to his family and community. Applied to wages, the scholastic doctrine of the just price implies that a just wage is one that enables the worker to maintain a standard of living appropriate to his social position and to meet his family's needs. This doctrine, which predates the industrial revolution and the development of capitalist labour markets, nonetheless captures something important about the moral intuition that underlies the modern concept of the living wage.

The Italian scholastic philosopher Sant'Antonino of Florence, writing in the fifteenth century, went further than most of his contemporaries in arguing that workers were entitled to receive not merely a subsistence wage but a wage sufficient to enable them to live decently and contribute to

the community. Sant'Antonino's analysis anticipates the modern capability approach in its insistence that the measure of a just wage is not mere biological survival but the full flourishing of the human person. This insight, which was marginalized in the dominant tradition of scholastic economics, has been recovered and developed in the contemporary philosophy of the living wage.

The Protestant Reformation introduced new complexities into the philosophical debate about just wages. The Calvinist tradition, in particular, developed an ethic of labour that valued work as a vocation and a calling, and that saw economic success as a sign of divine favour. Max Weber's famous analysis of the relationship between the Protestant ethic and the spirit of capitalism, in his 1904 essay, argues that this ethic helped create the cultural conditions for the development of capitalist economies by legitimating the systematic accumulation of wealth through disciplined labour. But the Protestant ethic also contained within it a strong insistence on the worker's obligation to labour diligently and honestly, and a corresponding insistence on the employer's obligation to pay a fair wage. The tension between the Protestant legitimation of capital accumulation and the Protestant insistence on economic fairness has never been fully resolved, and it continues to shape the cultural and ideological context of minimum wage debates.

## 11.2 The Enlightenment and the Birth of Political Economy: Adam Smith, Ricardo, and the Classical Tradition

The Enlightenment transformation of economic thought, associated above all with the work of Adam Smith, created a new framework for thinking about wages that both advanced and complicated the philosophical inquiry into just remuneration. Smith's account of wages in The Wealth of Nations, published in 1776, is a work of remarkable complexity and internal tension. On the one hand, Smith celebrated the market mechanism as a system of natural liberty that allocates resources efficiently and promotes the general welfare. On the other hand, Smith was deeply attentive to the power asymmetries that characterize the labour market and was remarkably candid about the systematic disadvantage of workers relative to employers.

Smith's observation that "the masters, being fewer in number, can combine much more easily; and the law, besides, authorizes, or at least does not prohibit their combinations, while it prohibits those of the workmen" is a devastating critique of the formal equality of the market concealing the structural inequality of the employment relationship. Smith recognized that wages are determined not by some neutral market mechanism but by a contest of power in which the parties are fundamentally unequal, a contest in which the state has historically tilted the playing field in favour of employers. This recognition, which Smith developed in the context of eighteenth-century British capitalism, is directly relevant to the analysis of wage-setting in twenty-first-century Bangladesh.

Smith also argued, in a passage that anticipates the modern living wage concept, that "a man must always live by his work, and his wages must at least be sufficient to maintain him. They must, upon most occasions, be somewhat more; otherwise it would be impossible for him to bring up a family, and the race of such workmen could not last beyond the first generation." This argument, that wages must be sufficient not merely for the worker's own survival but for the maintenance of his family, establishes the household as the relevant unit for calculating the

adequacy of wages, a methodological choice that has important implications for the design of living wage calculations.

David Ricardo's contribution to the theory of wages was, in some respects, more analytically rigorous than Smith's, but it was also more pessimistic. Ricardo's "iron law of wages" held that, in a competitive labour market, wages tend naturally toward the subsistence level: they will rise above subsistence when the demand for labour exceeds the supply, inducing population growth that brings wages back down, and they will fall below subsistence when the supply of labour exceeds demand, inducing population decline that brings wages back up. This iron law implied that there was little that legislation or trade union activity could do to permanently raise wages above subsistence, because any such improvement would be erased by the subsequent increase in population that it induced.

Ricardo's iron law has been thoroughly discredited by subsequent economic analysis and by the empirical evidence of sustained real wage growth in advanced industrial societies. But it retains a certain ideological half-life in the arguments of opponents of minimum wage legislation, who suggest that any legally mandated increase in wages above the competitive market rate will lead to unemployment, reduced investment, and industrial relocation. The analysis of these arguments, and their relevance to the Bangladeshi context, will be a central concern of Chapter Thirteen of this Part.

John Stuart Mill's treatment of wages in his Principles of Political Economy, first published in 1848, represents an important advance over both Smith and Ricardo. Mill retained the formal apparatus of classical wage theory, but he also insisted that the distribution of income, including the share going to workers as wages, was not determined by immutable natural laws but by human institutions, legal frameworks, and political choices. This insight, that the wage rate is not a natural fact but a social choice, is fundamental to the jurisprudential analysis of minimum wage legislation. If wages are determined by institutions and legal frameworks, then the question of what wages should be is genuinely open to political and legal intervention, and the argument that minimum wages "distort" a natural market equilibrium loses its theoretical foundation.

Mill also developed, in the context of his broader discussion of distributive justice, the embryo of what would later become the modern theory of the living wage. His argument that workers are entitled to receive a share of the product of their labour sufficient to enable them to live decently, and his critique of the system of wage labour as a transitional form that should ultimately give way to cooperative organization, anticipate many of the themes of the contemporary debate about just wages and economic democracy. Mill's vision of a society of worker cooperatives as the final form of a just economy, though never realized in the form he envisaged, has influenced subsequent thinking about the limitations of the wage relationship as a mode of organizing human labour.

### 11.3 Marx, Surplus Value, and the Critique of the Wage Form

Karl Marx's analysis of wages in Capital and in his earlier writings represents the most systematic and far-reaching critique of the wage relationship in the history of economic thought,

and it provides an indispensable framework for understanding the structural dynamics of wage-setting in a capitalist economy, including the dynamics of minimum wage legislation.

Marx's central claim about wages is that the wage is not, as it appears, the price of the worker's labour, but the price of the worker's labour power, that is, the worker's capacity to labour for a given period of time. The wage, in Marx's analysis, is determined by the cost of reproducing labour power, roughly speaking, the cost of keeping the worker alive, healthy, and capable of continuing to work and of raising the next generation of workers. This cost is, however, substantially less than the value that the worker creates during the working day: the difference between the value created and the value of labour power is surplus value, which is appropriated by the capitalist as the source of profit.

This analysis has profound implications for the philosophy and jurisprudence of minimum wages. If Marx is right that the wage is systematically set at a level below the value of the worker's contribution, then the minimum wage is not, as its defenders sometimes claim, a measure to ensure that workers receive the fair market value of their labour. It is, rather, a measure to ensure that workers receive enough to reproduce their labour power, that the rate of exploitation does not become so severe as to threaten the health and survival of the workforce. The minimum wage, on this analysis, is not a measure of justice but a measure of the minimum necessary concession to workers, consistent with the continued profitability of the capitalist system.

Marx was also attentive to the historical and social determination of the subsistence level. The cost of reproducing labour power, he argued, has a "historical and moral element": it is not determined by bare biological necessity alone but by the historically established standard of living of the working class, which varies between societies and periods. This insight anticipates the modern claim that the living wage is not a fixed biological minimum but a culturally and historically specific standard that reflects the social norms and expectations of a particular society. In Bangladesh, the socially accepted minimum standard of living has been changing as the country urbanizes, as workers migrate from rural to urban areas, and as rising aspirations for education, healthcare, and housing create new expectations about what a decent life requires.

The Marxist analysis of wages also illuminates the political dimension of minimum wage legislation. Marx recognized that the level of wages is determined not merely by economic forces but by the relative power of workers and capitalists, and that the capacity of workers to resist wage cuts or to demand wage increases depends on their degree of organization and their collective bargaining power. Minimum wage legislation, from this perspective, is a product of political struggle, a concession wrung from the capitalist class by the organized working class, rather than a benevolent gift from a neutral state. This political analysis is confirmed by the historical record of minimum wage legislation in Bangladesh, which, as Chapter Twelve will show, has consistently been the product of mass mobilization, protest, and political pressure.

The Pashukanis critique of legal form, which Marx's own theory of law inspired, provides an additional dimension of critical analysis. Evgeny Pashukanis, the Russian legal theorist who wrote in the 1920s, argued that the legal form itself, the form of abstract, formally equal, legally recognized subjects entering into rights-bearing relationships, is specifically capitalist in

character. The very form of minimum wage law, which sets a universal floor beneath which the wage of any worker cannot fall, reproduces the abstraction of the labour market: it treats all workers as equivalent units of labour power, all employers as equivalent units of capital, and it addresses their relationship as a relationship between formally equal legal subjects. This formalistic equality obscures the concrete inequalities of power, skill, need, and circumstance that differentiate actual workers and actual employers. The critique does not suggest that minimum wage law is therefore worthless; rather, it suggests that minimum wage law, as a form of legal regulation, operates within the constraints of the legal form itself and cannot, by itself, address the deeper inequalities that the legal form masks.

### 11.4 The Social Democratic Tradition and the Development of the Living Wage Concept

The idea of the living wage as a legal and political demand distinct from the minimum wage has a history that reaches back to the late nineteenth century, when the social democratic and labour movements of the industrializing world began to articulate demands for wages sufficient to sustain not merely bare subsistence but a dignified and fully human life.

The term "living wage" appears to have been coined by Cardinal Manning in the context of the London Dockers' Strike of 1889, and it was taken up in the social Catholic tradition by Pope Leo XIII in his encyclical Rerum Novarum of 1891. Rerum Novarum is one of the most influential documents in the history of the philosophy of wages, and it deserves careful attention in any analysis of the jurisprudential foundations of the living wage concept. Leo XIII argued, drawing on the natural law tradition, that workers have a natural right to a wage sufficient to maintain themselves and their families in a state of reasonable comfort. He rejected the view that wages are simply a matter of free contract between employer and worker, arguing that this view, though correct as a formal legal matter, ignored the practical reality that the worker, lacking any alternative means of support, was compelled to accept whatever the employer offered. He insisted that the state had an obligation to ensure that workers received a just wage, and that the justice of a wage was to be measured not by the formal voluntariness of the employment contract but by its adequacy for sustaining a decent human life.

Rerum Novarum's concept of the living wage was developed and elaborated in subsequent Catholic social teaching, particularly in Quadragesimo Anno (1931), Laborem Exercens (1981), and Centesimus Annus (1991). But its influence extended well beyond the Catholic tradition. The Sydney Living Wage Case of 1907, decided by Justice Henry Bournes Higgins of the Australian Commonwealth Court of Conciliation and Arbitration, applied a living wage principle to determine the minimum wage for workers in the harness-making industry, holding that the wage must be sufficient to meet the "normal needs of the average employee regarded as a human being living in a civilised community." Higgins's judgment, in the famous Harvester Case (Ex parte HV McKay, 2 CAR 1), is a landmark in the jurisprudence of the living wage, and it established the living wage as a legal standard in Australian industrial law that persisted for much of the twentieth century.

The early twentieth century also saw the development of living wage campaigns in the United Kingdom and the United States, associated with progressive reformers, trade unions, and social gospel movements. These campaigns made the living wage a central demand of the labour

movement and a significant political issue, though they were only partially successful in translating the concept into law. In the United Kingdom, the national minimum wage introduced by the Labour government in 1998 was explicitly not set at a living wage level; it was set at a level designed to reduce the worst exploitation without disrupting the labour market, and it has been criticized from the outset by living wage advocates as insufficient. The introduction of the National Living Wage for workers aged 25 and over in 2016, and the subsequent changes to the Low Pay Commission's remit to include consideration of living costs, represent a partial convergence of the minimum wage and living wage standards in the UK context, but a gap remains between the legal minimum and the amount independently calculated to be necessary for a decent life.

The Global Living Wage Coalition, established in 2013 by the Fairtrade Foundation, the Rainforest Alliance, the Sustainable Agriculture Network, the Forest Stewardship Council, and other certification and standards organizations, has developed the most widely used methodology for calculating living wages in different geographic contexts. The Anker Methodology, developed by Richard and Martha Anker, calculates the living wage based on the cost of a nutritious diet, decent housing, and other essential needs for a typical family in a specific location. In 2024, the ILO published its first comprehensive guidance document on living wages, establishing global principles for defining, calculating, and implementing living wages across diverse economic contexts. This landmark document represents the most authoritative international statement of the living wage standard to date, and it provides an important benchmark against which the adequacy of Bangladesh's minimum wage framework can be assessed.

### 11.5 The Capability Approach and the Human Rights Framework: Contemporary Philosophical Foundations

The most influential contemporary philosophical frameworks for thinking about the adequacy of wages are the capability approach, developed by Amartya Sen and Martha Nussbaum, and the human rights approach to labour standards, associated with Virginia Mantouvalou, James Nickel, and others. These frameworks are deeply complementary, and together they provide the most compelling contemporary account of what justice in wages requires.

Sen's capability approach, as developed in his 1999 book Development as Freedom and elaborated in numerous subsequent works, holds that the relevant measure of a person's well-being and the appropriate standard for assessing the adequacy of social arrangements is not income or utility but capabilities: the real freedoms that a person has to live a life they have reason to value. Capabilities include the capability to be well-nourished, to be in good health, to be sheltered, to be educated, to participate in the social life of one's community, to exercise political agency, and to pursue relationships and activities that give life meaning. Income is instrumentally important, as a means to capability, but it is not the ultimate measure of what matters.

The capability approach implies a distinctive account of the adequacy of wages. A wage is adequate, on this account, only if it enables the worker to develop and exercise the central human capabilities, not merely to survive biologically. A wage that keeps a worker alive and fit for

further labour, but that denies the worker the means to educate her children, to obtain adequate healthcare, to participate in cultural and social life, or to exercise genuine agency over the major decisions of her life, falls below the threshold of adequacy even if it meets a bare subsistence standard. Applied to the Bangladesh garment sector, the capability approach implies that the current minimum wage of Taka 12,500 per month, even after the 56 percent increase in November 2023, is dramatically insufficient, since it represents only approximately 38 percent of the independently calculated living wage, as documented by Swedwatch in their November 2024 briefing on garment workers in Bangladesh.

Nussbaum's specific articulation of the capability approach, in her 2011 book Creating Capabilities, provides a list of central human capabilities that she argues represents the minimum threshold of justice for any decent political and legal order. Among these capabilities, several are directly relevant to the adequacy of wages: bodily health, including access to adequate nutrition and medical care; bodily integrity, including freedom from physical assault and the ability to move freely; the ability to use the senses, imagine, think, and reason, which requires, among other things, adequate leisure and educational resources; emotional development, which requires stable relationships and freedom from anxiety about basic needs; and practical reason, which requires the capacity to form and pursue a conception of the good life. All of these capabilities are threatened by wages that force workers to choose between basic necessities, to work excessive overtime to meet basic needs, to forgo healthcare, to keep children out of school, and to live in overcrowded and inadequate housing.

The human rights approach to wages grounds the claim to a living wage not in the theory of capabilities but in the recognized category of fundamental human rights. Article 23 of the Universal Declaration of Human Rights recognizes the right to just and favourable remuneration and explicitly states that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Bangladesh is a party, similarly recognizes the right of everyone to the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, and a decent living for workers and their families. These provisions are not merely aspirational statements; they are legally binding treaty obligations that create enforceable obligations for state parties.

Virginia Mantouvalou's work on the human rights dimensions of labour law provides the most sophisticated contemporary account of the relationship between workers' rights and human rights. Mantouvalou argues that labour rights are human rights, not merely welfare rights or claims of distributive justice, because the denial of labour rights constitutes a denial of the worker's fundamental dignity and humanity. The worker who is paid a wage insufficient to maintain a decent life is not merely receiving less than she deserves in an economic sense; she is being treated as less than fully human, as an instrument of production rather than as a person of inherent worth. This human rights analysis provides the normative foundation for the claim that minimum wages set below living wage levels are not merely economically inefficient or socially suboptimal: they are human rights violations.

The Republican framework associated with Philip Pettit adds another dimension to the philosophical analysis of wages. Pettit's theory of freedom as non-domination holds that genuine freedom requires not merely the absence of actual interference in one's choices but the absence of the possibility of arbitrary interference, the absence of dependence upon the discretion of another. A worker who receives wages insufficient to sustain a decent life without incurring debt or forgoing basic necessities is not merely economically constrained; she is in a condition of domination, dependent upon the goodwill of her employer and unable to resist arbitrary treatment because the alternative to continued employment is destitution. The republican analysis supports the claim that the law of minimum wages must be oriented not merely toward preventing the most extreme exploitation but toward the broader goal of reducing the domination of workers by employers, a goal that requires wages sufficient to provide genuine economic independence and the practical capacity for resistance.

## 11.6 The Libertarian Critique and Its Philosophical Limits

No serious philosophical account of minimum wages can ignore the libertarian critique, which holds that minimum wage laws are unjust interferences with the freedom of contract and the natural operation of the market. This critique has been articulated in its most rigorous form by Robert Nozick in his 1974 book Anarchy, State, and Utopia, and in the context of labour economics by Milton Friedman and other members of the Chicago School.

Nozick's argument proceeds from his entitlement theory of justice, which holds that a distribution is just if it has arisen from a just initial distribution through a series of just transfers. A just transfer, for Nozick, is a voluntary exchange between consenting parties. On this account, a wage agreed to by a worker and an employer through voluntary negotiation is just, regardless of its level, provided that the worker genuinely consented and was not subject to force or fraud. Minimum wage laws, which prohibit parties from agreeing to wages below the legal minimum, are therefore unjust constraints on freedom, even if they are enacted with benevolent intent.

This argument has some surface plausibility, but it fails at several critical points. First, it assumes that the employment contract is genuinely voluntary, that the worker freely chooses to accept the wage offered, when in reality the worker faces the choice of accepting the offered wage or facing destitution. The "voluntariness" of a contract entered into under conditions of severe economic compulsion is a very thin conception of voluntary choice, and most philosophical traditions, including many that are broadly sympathetic to market institutions, reject it as an adequate basis for the justice of contractual outcomes. Second, Nozick's theory depends on the justice of the initial distribution of property rights, and that initial distribution is, as G.A. Cohen, Michael Otsuka, and other critics of Nozick have shown, itself deeply unjust, the product of historical processes of dispossession, colonialism, and violence that cannot be rendered retroactively just by subsequent voluntary exchange.

Third, and most fundamentally, the libertarian critique treats the freedom of contract as the only freedom that matters and ignores the other freedoms, the capabilities, the non-domination, the human dignity, whose realization requires wages above the bare minimum of destitution. A political philosophy that counts only the freedom of the employer not to be constrained by minimum wage law as a genuine freedom, while ignoring the effective unfreedom of the worker

who cannot leave her employer for fear of starvation, is not a coherent theory of liberty but an ideological defense of the status quo. The republican analysis of freedom as non-domination, the capability analysis of freedom as the real capacity to pursue valued ways of living, and the human rights analysis of freedom as effective access to the basic conditions of a decent life, all provide more adequate accounts of what genuine freedom requires in the context of the labour market.

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## CHAPTER TWELVE: HISTORICAL EVOLUTION OF MINIMUM WAGE LAW IN BANGLADESH: FROM THE COLONIAL MINIMUM WAGES ACT TO THE BANGLADESH LABOUR ACT 2006

### 12.1 Colonial Origins: The Minimum Wages Act, 1948

The legislative framework for minimum wages in Bangladesh has its origins in the colonial period and in the early decades of Pakistan's existence as an independent state. The Minimum Wages Act, 1948, enacted by the Government of India shortly after independence and applied to the territories that became East Pakistan, established the basic legal architecture for minimum wage-setting in the subcontinent that persisted, with modifications, until the enactment of the Bangladesh Labour Act, 2006.

The 1948 Act was itself the product of a much longer history of colonial labour regulation, stretching back to the Factory Acts of the nineteenth century and the various legislative interventions that followed them. But the specific impetus for a minimum wage statute came from the recommendations of the Standing Labour Committee, established in 1942, and the Labour Investigation Committee, which submitted its report in 1946. These committees documented extensive evidence of sweated labour and sub-subsistence wages in a range of industries, particularly in agriculture, domestic service, and small-scale manufacture, and recommended legislative intervention to establish wage floors in the most exploitative sectors.

The 1948 Act established a system of industry-specific wage-setting through Minimum Wage Advisory Boards, with separate boards for each industry scheduled under the Act. This sectoral approach reflected the diversity of Indian industry and the complexity of setting a uniform national minimum wage across regions with very different costs of living and very different levels of economic development. It also reflected the political economy of the time: a universal minimum wage would have provoked strong resistance from employers across all sectors, while the industry-specific approach allowed wage floors to be set in the most egregiously exploitative sectors while leaving other sectors relatively unaffected.

The architecture of the 1948 Act established the basic institutional framework for minimum wage-setting in Bangladesh that persists to the present day, though with significant modifications. The key institutional features are: the establishment of a Minimum Wages Board or Advisory Committee for each scheduled industry; the requirement that the Board include equal representation from employers and workers, along with independent member representation; the recommendation of a minimum wage by the Board, subject to government

approval and gazette notification; and periodic revision of the minimum wage at intervals determined by the Board or the government.

The weaknesses of this system, which have been extensively documented in subsequent analyses, were apparent from the outset. The system of industry-specific wage-setting meant that workers in industries not scheduled under the Act had no legal minimum wage at all; the effective coverage of the minimum wage framework was therefore limited to a subset of the formal sector workforce, and the vast majority of workers, including all agricultural workers and most home-based workers, were excluded entirely. The requirement of government approval for wage recommendations introduced a political element into the wage-setting process that systematically depressed the effective minimum wage below what the Boards themselves recommended. And the absence of effective enforcement mechanisms meant that even the legal minimum wage was widely violated in practice.

## 12.2 The Pakistan Period: Minimum Wages in East Bengal

The application of the 1948 Act in East Bengal, and subsequently in East Pakistan, was shaped by the particular political economy of the eastern wing of the new state. As analysed in Part One of this textbook, East Pakistan was subject to a form of internal colonialism in which the economic resources of the east were systematically transferred to the west, and in which the interests of Bengali workers were subordinated to the interests of West Pakistani capital and the West Pakistani state.

In this context, minimum wage legislation in East Pakistan was even less effective than in India, both because the enforcement capacity of the state was weaker and because the political will to enforce wage standards against the interests of employers was even more limited. The garment industry, which would later become the dominant sector of the Bangladeshi economy, did not yet exist in anything like its current form, and the major industries in East Pakistan were jute processing, tea cultivation, and small-scale manufacturing.

The jute industry deserves particular attention in any analysis of minimum wages in the region, because it was the most important industry of East Bengal for most of the colonial and early postcolonial period, and because the conditions of jute workers illustrate with particular clarity the limitations of minimum wage law in a context of extreme employer power and inadequate state capacity. The jute mills of Narayanganj and the broader Dhaka region employed hundreds of thousands of workers in conditions of severe hardship. The minimum wages set for jute workers were consistently at or below subsistence level, and enforcement was minimal. The jute workers' unions that existed were frequently controlled or co-opted by the employers, and independent union organizing was actively repressed.

The experience of jute workers in East Pakistan illustrates a pattern that has been documented repeatedly in the history of minimum wage law in the subcontinent: the law sets a minimum wage floor, but the floor is set at a level that merely legitimizes existing conditions of near-subsistence employment, and the enforcement apparatus is too weak and too politically compromised to prevent even this minimal standard from being systematically violated.

## 12.3 Post-Independence Developments: The Wages and Service Conditions (Other than Tea Plantation Workers) Ordinance, 1975

Following the independence of Bangladesh in 1971, the new government inherited the legal framework of the 1948 Act and the broader colonial labour law architecture. The catastrophic economic conditions of the early years of independence, the famine of 1974, and the political turmoil that preceded and followed the assassination of Sheikh Mujibur Rahman in 1975, all created an environment in which labour law reform was not a priority and in which the enforcement of even existing minimum wage standards was effectively impossible.

The Wages and Service Conditions (Other than Tea Plantation Workers) Ordinance, 1975, was enacted by the post-Mujib military government of General Ziaur Rahman as part of a broader effort to rationalize and consolidate the labour law framework. The Ordinance extended the minimum wage system to a broader range of industries and established a more systematic process for the periodic revision of minimum wages. But its practical impact was limited by the same structural constraints that had hampered the earlier framework: inadequate enforcement capacity, political pressure from employers, and the exclusion of large categories of workers from the system's coverage.

The period from 1975 to 1990, which saw successive military governments under Ziaur Rahman and Hussain Muhammad Ershad, was characterized by a systematic weakening of workers' collective rights and a political economy deeply hostile to effective labour law enforcement. Both regimes were dependent upon the support of domestic capital and international investors, and both were therefore strongly disinclined to enforce labour standards that would increase employer costs. The minimum wage rates set during this period were consistently below inflation-adjusted equivalents of earlier rates, representing a real decline in the legal minimum standard of living for workers.

## 12.4 The Garment Sector and the Emergence of the Modern Minimum Wage Problem

The emergence of the ready-made garments (RMG) sector as the dominant industry of the Bangladeshi economy, beginning in the early 1980s and accelerating through the 1990s and 2000s, fundamentally transformed the politics and economics of minimum wage law in Bangladesh. The RMG sector became the primary site of minimum wage controversies, because it was the sector in which wages were most visibly low, in which the connection between wages and global supply chains was most direct, and in which the organized labour movement was, despite severe repression, most active.

The development of the RMG sector in Bangladesh was made possible by several convergent factors: low labour costs, particularly female labour costs; preferential access to Western markets under the Multi-Fibre Arrangement (MFA) and its successor, the Agreement on Textiles and Clothing; the entrepreneurial energy of a class of Bangladeshi businessmen who had acquired production knowledge through connections with South Korean garment manufacturers; and the liberalization of Bangladesh's investment regime under successive governments. By the mid-1990s, the RMG sector was already the dominant export industry of Bangladesh, employing

millions of workers, predominantly women, in thousands of factories in and around Dhaka, Chittagong, and Gazipur.

The wages paid in the early RMG sector were extraordinarily low, even by the standards of the time. Studies conducted in the 1990s documented wages at or below the level set by the Minimum Wage Boards, and widespread non-compliance with even the minimal statutory standards. Workers were typically employed without written contracts, paid irregularly, and subject to arbitrary dismissal and physical abuse. The industry's competitive advantage was built entirely on the exploitation of an abundant supply of desperate rural migrants, mostly women, who had left behind the poverty and patriarchal control of the village for the somewhat different poverty and patriarchal control of the urban garment factory.

The first systematic minimum wage for the garment sector was established in 1994, following sustained pressure from trade unions, international labour organizations, and consumer campaigns in Western markets. The 1994 minimum wage was set at Taka 930 per month, a figure that was almost immediately recognized as insufficient, and it triggered the first in a long series of controversies about the adequacy of the garment sector minimum wage that have continued to the present day.

The subsequent history of minimum wage revisions in the garment sector follows a depressingly consistent pattern: wages are revised after a period of intense worker agitation, often involving strikes, demonstrations, and factory shutdowns; the revised wage is set at a level substantially below what workers and unions demand and below independently calculated living wage levels; the revised wage is initially not fully implemented in many factories; and within a few years, inflation erodes the real value of the nominal wage increase, leading to a new cycle of agitation and revision. The wages in chronological order were: Taka 930 in 1994, Taka 1,662.50 in 2006, Taka 3,000 in 2010, Taka 5,300 in 2013, Taka 8,000 in 2019, and Taka 12,500 in December 2023. In 2025, a further 10 percent increase brought the wage to approximately Taka 13,750, which at prevailing exchange rates was equivalent to approximately USD 113 per month.

Each of these revisions was preceded by significant worker protests, and several involved industrial violence and deaths. The 2010 revision followed prolonged industrial unrest in the garment areas around Dhaka. The 2013 revision took place in the shadow of the Rana Plaza disaster of April 2013, which killed over 1,100 garment workers and focused international attention on the conditions of the Bangladeshi garment sector as never before. The 2019 revision followed further rounds of protests, and the 2023 revision, discussed in detail in Chapter Thirteen, was the most controversial and violent of all, with four workers killed during the protests.

### 12.5 The Bangladesh Labour Act, 2006: The Current Legal Framework

The Bangladesh Labour Act (BLA), 2006, consolidated the labour law framework of Bangladesh into a single statute, replacing the numerous earlier enactments that had previously governed different aspects of employment relations. Chapter 11 of the BLA (Sections 138 to 152) deals with the minimum wage framework, establishing the institutional structure of the Minimum Wages Board and the procedures for minimum wage-setting.

Section 138 of the BLA establishes the Minimum Wages Board as a permanent body responsible for determining minimum wages for different sectors of industry. The Board consists of a Chairman, who is a person qualified as or who has worked as a Judge, three independent members, three representatives of employers, and three representatives of workers. The asymmetry between the formally tripartite composition of the Board and the practical power relationships between its members has been a persistent source of controversy, with worker representatives consistently arguing that the Board's decisions systematically underweigh the interests of workers.

Section 141 provides that the Board may, on its own initiative or on an application from the government, an employers' organization, or a workers' organization, inquire into and determine the minimum wages for workers in any industry. The Board is required to give notice of any proposed wage revision, to receive representations from employers and workers, and to conduct hearings before making its recommendations. Section 143 provides that the recommendations of the Board take effect only after they have been published in the official gazette by the government; this provision gives the government the power to delay or modify Board recommendations, introducing a political element into the wage-setting process.

The minimum wage framework of the BLA applies to workers in the formal sector covered by the Act. Agricultural workers, domestic workers, and workers in the informal sector are not covered by the minimum wage provisions of the BLA. This creates a dramatic two-tier structure: workers in the formal sector have access to minimum wage protection, however inadequate, while the majority of Bangladesh's working people, who are employed in agriculture, domestic service, and the informal economy, have no legal minimum wage at all.

The enforcement provisions of the BLA's minimum wage framework are weak and consistently unenforced. Section 307 of the BLA provides that an employer who fails to pay the minimum wage is guilty of an offence and liable to a fine of up to Taka 5,000, subsequently increased under amendments. This penalty is trivially small in relation to the savings that employers make by paying below the minimum, and its deterrent effect is negligible. The responsibility for enforcement rests primarily with the Department of Inspection for Factories and Establishments (DIFE), but as documented in Part Two of this textbook, DIFE is severely under-resourced and its inspections are consistently inadequate.

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## CHAPTER THIRTEEN: THE GREAT WAGE CONTROVERSY OF 2023 AND ITS AFTERMATH: A DETAILED LEGAL AND POLITICAL ANALYSIS

### 13.1 Background: The Political Economy of Wage Revision in 2022 to 2023

The minimum wage revision of 2023, which culminated in the setting of the new garment sector minimum wage at Taka 12,500 per month in November 2023, was the most politically charged and the most intensely contested minimum wage revision in the history of Bangladesh's garment industry. Understanding the full significance of this controversy requires situating it in the political and economic context of the period immediately preceding it.

Bangladesh's garment sector had recovered from the severe disruptions of the COVID-19 pandemic relatively quickly. Exports grew strongly through 2021 and 2022, reaching record levels, and the industry's major manufacturers reported strong profits. At the same time, inflation in Bangladesh accelerated sharply from late 2021 onward, driven by rising global commodity prices, the depreciation of the Bangladeshi taka against major currencies, and domestic supply constraints. The Consumer Price Index rose by over 9 percent in 2023, with food inflation substantially higher. For garment workers already struggling to survive on the minimum wage of Taka 8,000 per month, which had been unchanged since 2019, this inflation was devastating.

The real value of the Taka 8,000 minimum wage had already been inadequate in 2019; by 2023, it represented a significant real decline from its already inadequate 2019 level. Workers' organizations had been calling for a wage revision since at least 2022, with the primary demand of the major trade union federations converging on Taka 23,000 per month, a figure that was derived from the independently calculated cost of meeting basic needs, including food, housing, transport, healthcare, and education, in the Dhaka garment production areas.

The demand for Taka 23,000 was endorsed by a broad coalition of labour organizations, including the IndustriALL Bangladesh Council, the Bangladesh Garment, Textile, Leather and All Manufacturing Workers' Federation, and numerous other trade union bodies. It was also supported by a number of international brands and retailers, though, as the Clean Clothes Campaign documented, many major brands that had publicly committed to living wages for their supply chain workers remained conspicuously silent on the specific demand of Bangladeshi garment workers.

Patagonia, one of the brands most publicly committed to fair wages in its supply chain, endorsed the Taka 23,000 demand in October 2023, explicitly calling it the minimum necessary for a decent life. But major buyers such as H&M, Primark, Zara, and others maintained a conspicuous silence on the specific wage demand, while continuing to source from Bangladesh and to profit from the industry's low labour costs.

The Minimum Wages Board, which had been convened in 2023 to consider the revision, received submissions from employers' organizations, workers' organizations, and independent experts. The employers' initial proposal of Taka 10,400 per month provoked immediate rejection from workers' representatives and widespread condemnation from labour rights organizations. The Board's deliberations were protracted and contested, and when it became clear that the Board was not going to recommend anything close to the workers' demand, industrial unrest escalated sharply.

### 13.2 The October and November 2023 Protests: Violence, Deaths, and the Political Economy of Repression

The weeks of October and November 2023 saw the most sustained and violent wave of industrial action in Bangladesh's garment sector since the 2013 Rana Plaza aftermath. Workers at factories in Dhaka, Gazipur, Ashulia, and other major production areas went on strike, organized demonstrations, and in some cases blocked roads and damaged factory premises. The protests

were met with a combination of police violence and employer-organized retaliation that resulted in the deaths of at least four workers and injuries to many hundreds more.

The deaths of garment workers during the 2023 wage protests represent a profound indictment of the political and legal framework within which minimum wage setting occurs in Bangladesh. That workers should die in the process of demanding a wage sufficient to live on is not a technical legal problem or a regrettable side effect of an otherwise sound system; it is a symptom of a system in which the structural power of employers and the state is deployed against the fundamental economic claims of the most vulnerable workers.

The legal response to the protests was deeply troubling. Rather than investigating the deaths of workers and prosecuting those responsible for the violence, the state's immediate response was to file criminal cases against hundreds of workers and labour leaders for their role in the protests. The filing of criminal charges against workers exercising what are, under both domestic law and international human rights standards, their fundamental rights to assembly, demonstration, and collective action, represented a significant violation of both the letter and the spirit of the BLA's provisions on workers' fundamental rights, and of Bangladesh's obligations under the ILO Conventions on freedom of association and the right to organize.

The Bangladesh Law Journal's analysis of the legal proceedings initiated against protesting workers in late 2023 and early 2024 documents a pattern of misuse of the criminal law to suppress legitimate labour organizing activity. Workers were charged under provisions of the Penal Code and the Special Powers Act for conduct that constituted, at most, minor property offences in the context of a labor dispute, and the charges were clearly intended to intimidate workers and to deter future organizing activity rather than to vindicate any genuine criminal interest of the state. The withdrawal of these charges, promised by the Minimum Wages Board and subsequently by the interim government following the July 2024 political transition, was a belated recognition of their impropriety, but the damage done to the affected workers and to the broader cause of free trade union activity was not undone by their withdrawal.

The violence of October and November 2023 also revealed the informal mechanisms of employer control that operate alongside and beneath the formal legal framework. Reports documented that employer organizations coordinated the dismissal of workers identified as protest leaders, that private security forces employed by factory owners attacked demonstrating workers, and that government officials at the local level actively facilitated the repression of protests. These extralegal mechanisms of employer control are a consistent feature of the political economy of minimum wage enforcement in Bangladesh, and they cannot be addressed solely through reforms to the formal legal framework, however important such reforms may be.

### 13.3 The Decision: Taka 12,500 and the Gap Between Law and Justice

The Minimum Wages Board's final recommendation of Taka 12,500 per month as the new minimum wage for garment workers, published in the official gazette in November 2023, represented a 56.25 percent increase over the previous minimum wage of Taka 8,000. The government accepted the recommendation without modification, and the new wage came into force on December 1, 2023.

The 56.25 percent increase, taken in isolation, sounds substantial. But its meaning can only be assessed by examining it in context. The previous wage of Taka 8,000 had been unchanged for four years, during which period inflation had eroded its real value significantly. Adjusting for inflation, the Taka 12,500 represented a real increase over the inflation-adjusted value of the 2019 wage of only approximately 20 to 25 percent, depending on the price deflator used. This real increase, while meaningful, was substantially less than the real gains needed to bring workers' wages to a level sufficient for a decent life.

Moreover, the Taka 12,500 minimum wage was significantly below every independent estimate of the living wage for garment workers in Bangladesh. Estimates by the Global Living Wage Coalition, the Asia Floor Wage Alliance, and national research organizations consistently put the living wage for a garment worker supporting a family in the Dhaka area at between Taka 30,000 and Taka 33,000 per month, taking into account the cost of a nutritious diet, decent housing, healthcare, children's education, and other essential needs. The Taka 12,500 represents approximately 38 to 42 percent of the independently calculated living wage, a figure confirmed by Swedwatch's November 2024 briefing on wages in the Bangladesh garment sector.

The workers' demand of Taka 23,000 was itself a compromise position, calculated to represent the minimum wage necessary to meet basic needs under current conditions of inflation and cost of living, and it was significantly below the full living wage calculated by independent researchers. Even the workers' own demand, which they considered a minimum and which provoked violent state repression when they sought to assert it, was set well below what independent analysis indicates is necessary for a genuinely decent life.

This gap, between the legal minimum of Taka 12,500, the worker demand of Taka 23,000, and the independently calculated living wage of Taka 30,000 to 33,000, is not merely a gap between different views about what wages should be. It is a measure of the extent to which the minimum wage setting process systematically undervalues workers' interests and systematically prioritizes the interests of employers and of the consumers in Western markets who benefit from cheap garment prices.

The jurisprudential analysis of this gap must begin with the constitutional and statutory framework. Section 141 of the BLA requires the Minimum Wages Board to take into account, in determining minimum wages, "the cost of living and the standard of living of workers in similar industries." This statutory standard is, on its face, broad enough to support a living wage rather than a bare subsistence wage. A Board that took seriously its statutory obligation to consider the standard of living of workers and their families in similar industries, and that applied the international human rights standard of wages sufficient to maintain "an existence worthy of human dignity" as required by Bangladesh's treaty obligations under the ICESCR, would be required to recommend a wage substantially higher than Taka 12,500.

The fact that the Board did not do so reflects not a failure of legal interpretation but a failure of political will, and specifically a failure of the state's will to protect the interests of workers against those of employers. The political economy of minimum wage-setting in Bangladesh, as in most developing export-oriented economies, is one in which the voice of employers is systematically amplified relative to the voice of workers, in which the government's concern to

maintain Bangladesh's international competitiveness as a garment supplier consistently overrides its obligation to protect the fundamental rights of workers, and in which the institutional framework of the Minimum Wages Board is insufficiently independent to withstand political pressure from employer interests.

### 13.4 The Aftermath: Implementation, Non-Compliance, and the 2025 Adjustment

The implementation of the Taka 12,500 minimum wage from December 2023 was, by the government's own account, substantially successful in the formal sector. A report from the Ministry of Labour and Employment, cited in The Daily Star of November 11, 2024, indicated that over 99 percent of factories under the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) had implemented the minimum wage, with 2,121 out of 2,140 factories in compliance. This figure, if accurate, represents a significant improvement over the historically low compliance rates documented in earlier periods.

However, several important qualifications must be entered against this picture of successful implementation. First, the figure relates only to BGMEA member factories, which are the larger and more visible segment of the garment industry. Smaller factories and subcontractors operating outside the formal supply chains of major brands are typically not included in compliance monitoring, and evidence suggests that compliance rates among these smaller operators are substantially lower. Second, the figure relates to the headline minimum wage, not to the full range of conditions of service required by the BLA. Workers at compliant factories may still face violations of overtime pay requirements, leave entitlements, and other statutory conditions. Third, the existence of arrears in payment at 17 factories as of the reporting date suggests that even among technically compliant factories, actual payment of wages was not always timely.

The political context of the July Revolution of 2024, which brought an end to the Sheikh Hasina government and installed a civilian interim government headed by Muhammad Yunus, created new momentum for minimum wage reform. The interim government signaled its commitment to further minimum wage adjustment, and in 2025, the garment sector minimum wage was increased by a further 10 percent, bringing it to approximately Taka 13,750 per month. The Business Standard of Bangladesh reported in March 2025 that this brought Bangladesh's garment minimum wage to approximately USD 113 per month at prevailing exchange rates, putting it broadly in line with Pakistan, Egypt, and India, and somewhat below Cambodia and Vietnam.

While the 2025 adjustment was welcome, it was clearly insufficient to close the gap between the legal minimum and the living wage. The interim government also gave a commitment, during the ILO Governing Body session of October to November 2024 in Geneva, to amend the labour law to align with international standards, including through easing trade union rules and documentation requirements. The Bangladesh Labour (Amendment) Bill 2026, which passed the National Parliament in early 2026, represents the legislative fruit of these commitments, though its adequacy on wages and collective bargaining remains a subject of serious debate.

# CHAPTER FOURTEEN: THE ECONOMICS OF MINIMUM WAGES: EMPLOYMENT EFFECTS, PRODUCTIVITY, AND THE BANGLADESH EVIDENCE

## 14.1 The Theoretical Debate: Neoclassical Models, Monopsony Theory, and the New Empirical Economics of Minimum Wages

The economic debate about the employment effects of minimum wages is one of the most contentious in all of economics, and its resolution has direct implications for the design of minimum wage policy in Bangladesh. The standard neoclassical model predicts that a minimum wage set above the competitive equilibrium wage will reduce employment, because at the higher wage, employers will demand less labour and workers will supply more, creating a surplus of labour, that is, unemployment. This prediction has been the dominant theoretical position in mainstream economics for most of the twentieth century, and it has been the primary theoretical basis for opposition to minimum wage increases.

The neoclassical prediction depends on several crucial assumptions: that the labour market is competitive, with many employers and many workers, so that no individual can set wages; that labour markets clear, so that wages adjust to bring supply and demand into balance; and that labour is freely substitutable, so that employers can respond to a wage increase by substituting capital for labour. Each of these assumptions is questionable in the specific context of the Bangladesh garment sector, and indeed in most real-world labour markets.

The monopsony model of the labour market, developed by Joan Robinson in the 1930s and subsequently elaborated into modern oligopsony theory by economists including Alan Manning and David Card, provides a fundamentally different account of wage determination and the employment effects of minimum wages. In a monopsonistic labour market, there are few employers relative to many workers, and employers have market power over wages: they can set wages below the competitive equilibrium without losing all their workers, because workers face significant costs, including geographic immobility, information costs, and search costs, in switching employers. In a monopsonistic labour market, the profit-maximizing wage for employers is below the competitive equilibrium wage, and the minimum wage, if set at or below the competitive equilibrium, will actually increase both wages and employment, by correcting the monopsonistic distortion.

The empirical evidence on the employment effects of minimum wages has been transformed by the pioneering work of Card and Krueger, whose 1994 study of fast food employment in New Jersey and Pennsylvania found no negative employment effects from a significant minimum wage increase. This study, published in the American Economic Review, challenged the dominant neoclassical model and provoked a research program that has now produced hundreds of empirical studies on the employment effects of minimum wages in different contexts. The overall finding of this literature, reviewed most comprehensively by Arindrajit Dube in his 2019 report for the UK government, is that the employment effects of minimum wages are small and uncertain, and that minimum wage increases at the levels typically legislated in advanced industrial economies do not produce the significant job losses predicted by the standard neoclassical model.

The specific evidence for Bangladesh and comparable garment-producing economies is more limited, but several studies have examined the relationship between wages and employment in the Bangladeshi garment sector. The ILO's 2022 report on employment, wages, and productivity trends in the Asian garment sector provides comparative data suggesting that countries, most notably Cambodia, that have implemented rapid real wage growth have not experienced the employment losses predicted by the neoclassical model, and that rapid wage growth can be accompanied by growth in exports, employment, and labour productivity. Cambodia's experience is particularly instructive: the country implemented a policy of regular minimum wage increases after the 2012 garment workers' protests, and wages grew rapidly in real terms through the period from 2013 to 2018. Far from experiencing the employment collapse predicted by employers and some economists, Cambodia's garment sector continued to grow strongly, with compound annual growth in exports, gross value added, and employment that was among the highest in Asia.

The Cornell Global Labor Institute's February 2025 policy brief on Bangladesh's minimum wage-setting system documents the purchasing power of manufacturing wages in Bangladesh as the lowest among top apparel-producing countries in the 2024 US International Trade Commission apparel competitiveness investigation, with monthly average earnings of USD 389 in PPP-adjusted dollars. This figure is remarkably low even by the standards of the region, and it suggests that the dominant economic rationale for keeping wages low, that higher wages would make Bangladesh uncompetitive, rests on a misunderstanding of the dynamics of competitiveness in the global garment market.

### 14.2 Monopsony and the Bangladesh Garment Labour Market

The structure of the Bangladesh garment labour market exhibits several features characteristic of monopsony or oligopsony. There is a high degree of geographical concentration of garment production in specific urban areas, particularly in and around Dhaka, Gazipur, and Ashulia, which limits workers' ability to switch employers without incurring significant costs of relocation. There is a significant information asymmetry: workers typically have limited information about wages and conditions at other factories, making it difficult to use exit threats as a bargaining tool. There are high non-wage switching costs associated with changing employers, including the loss of seniority-based entitlements, the disruption of social networks, and the uncertainty of finding new employment. And the very large scale of the industry relative to the limited geographic areas in which it is concentrated means that the actions of large employers, particularly the employer associations like BGMEA, can have a significant effect on the general wage level in the sector, a market power that is characteristic of oligopsony.

The practical implication of monopsony in the Bangladesh garment labour market is that minimum wages set below the competitive equilibrium wage, which is the likely position of the current minimum wage, are not merely redistributive instruments that reduce employer profits while maintaining employment. They are corrections to a market failure that has depressed wages below the competitive level, and they therefore have the potential to increase both wages and employment by correcting the monopsonistic distortion.

This analysis fundamentally undermines the competitiveness argument against higher minimum wages in Bangladesh. If the current minimum wage is below the competitive equilibrium, then raising it toward the living wage will not cause the employment losses predicted by the neoclassical model; it will instead correct a market failure that has long subsidized the garment industry and the international brands sourcing from it at the expense of the workers.

### 14.3 Productivity, Investment, and the Wage-Productivity Nexus

A second dimension of the economic analysis of minimum wages concerns the relationship between wages and labour productivity. The efficiency wage theory, associated with economists including George Akerlof, Janet Yellen, and Carl Shapiro, argues that higher wages can increase worker productivity through several mechanisms: by reducing turnover and thereby preserving the firm-specific human capital of experienced workers; by improving worker nutrition and health, which is particularly relevant in contexts where wages are close to subsistence level; by increasing worker effort and motivation; and by reducing shirking, because the higher the wage, the more the worker loses by being dismissed for poor performance.

In the specific context of the Bangladesh garment sector, the turnover and nutrition effects of efficiency wages are likely to be particularly significant. The garment industry is characterized by very high labour turnover, which imposes significant costs on employers: the costs of recruiting and training new workers, the lower productivity of inexperienced workers, and the disruption to production schedules caused by turnover. A significant wage increase that reduces turnover could therefore produce productivity gains that partially or fully offset the increased wage cost.

The nutrition and health effect of wage increases is potentially very significant in a context where wages are close to subsistence level, as they currently are for most Bangladesh garment workers. The evidence from development economics consistently shows that improvements in nutrition lead to significant gains in physical and cognitive capacity, and therefore in labour productivity. A wage increase that enables workers to afford adequate food could therefore produce substantial productivity gains.

The investment dimension is also important. The garment sector in Bangladesh has historically been characterized by low capital intensity, high labour intensity, and limited investment in technology and skills development. International evidence, including the evidence from Cambodia's experience of rapid wage increases, suggests that significant wage increases can stimulate investment in labour-saving technology and in worker training, leading to improvements in product quality, productivity, and the capacity of the industry to move up the value chain from basic garment assembly to more complex and higher-value production. This upgrading of the industry's technological and skills base is essential to the long-term sustainability of Bangladesh's position in the global garment supply chain, which faces increasing competition from automated production technologies.

### 14.4 The Competitive Argument and Its Limits: A Critical Assessment

The primary argument advanced against significant minimum wage increases in Bangladesh by employers and by some government officials is the competitive argument: that higher wages will make Bangladesh less competitive in the global garment market, leading to the relocation of orders to lower-wage competitors such as Vietnam, Cambodia, India, and Ethiopia. This argument has significant political resonance, because the livelihoods of millions of workers depend on the continued growth of Bangladesh's garment exports, and any policy that threatens those exports threatens those livelihoods.

However, the competitive argument has significant limitations that are often overlooked in policy debates. First, it assumes that Bangladesh's competitive advantage in the garment sector rests primarily on low labour costs, but this is a partial and increasingly inaccurate account of the industry's competitive dynamics. Competitiveness in the global garment market depends not only on wage costs but on product quality, delivery speed, reliability, flexibility, infrastructure quality, the depth of the textile supply base, and proximity to major markets. Bangladesh has accumulated significant advantages in all of these dimensions that are not replicated by lower-wage competitors, and these non-wage advantages create a degree of competitive resilience that is not reflected in simple wage comparisons.

Second, the competitive argument typically assumes that buyers will relocate their orders in response to wage increases, but the evidence on buyer behaviour suggests that this assumption is too simple. Major international brands have very substantial sunk costs in their Bangladesh supplier relationships: they have invested in factory auditing, quality assurance systems, logistics, and supplier development that would take years to replicate in a new sourcing location. They also have reputational concerns: sourcing from Ethiopia or Myanmar would expose them to different sets of human rights and governance risks that are at least as significant as the wage cost savings. The concentration of Bangladesh's garment industry and its high level of technical specialization create switching costs for buyers that are rarely factored into simple competitive analyses.

Third, and most fundamentally, the competitive argument ignores the possibility of changing the competitive structure through collective action among producing countries and through supply chain due diligence requirements imposed by legislation in importing countries. If all garment-producing countries were to raise wages simultaneously toward living wage levels, the competitive argument would lose its force, because there would be no low-wage country to which buyers could relocate. The development of international frameworks for supply chain due diligence, including the EU Corporate Sustainability Due Diligence Directive (CSDDD), which was adopted in 2024 and requires companies to conduct human rights due diligence in their supply chains, potentially including requirements related to wages, represents a structural change in the regulatory environment that could reduce the competitive pressure on wages.

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## CHAPTER FIFTEEN: THE LIVING WAGE STANDARD: DEFINITION, CALCULATION, AND LEGAL IMPLICATIONS FOR BANGLADESH

### 15.1 What Is a Living Wage? Definitional Debates and Methodological Approaches

The concept of the living wage is simultaneously simple and complex. At its simplest, a living wage is a wage that enables a worker and her family to live a decent life, meeting basic material needs and participating fully in the social and cultural life of their community. At its most complex, determining what counts as a decent life, which needs are basic, what level of participation in community life is necessary, and how these standards vary across different geographic, social, and cultural contexts, requires engagement with deep philosophical questions about human flourishing, human dignity, and the nature of the good life.

The most widely used contemporary definition of the living wage is that of the Global Living Wage Coalition (GLWC), which defines the living wage as "the remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing, and other essential needs including provision for unexpected events." This definition, which was confirmed and extended in the ILO's first comprehensive guidance on living wages published in 2024, establishes the family as the reference unit, the standard work week as the relevant time period, and the satisfaction of a comprehensive basket of essential needs as the standard of adequacy.

The methodological approach developed by Richard and Martha Anker for the Global Living Wage Coalition operationalizes this definition through a detailed survey-based methodology. The Anker Methodology involves surveying the actual costs of a nutritious diet, decent but not luxurious housing, other basic non-food needs, and provision for unexpected events in specific local markets. The family size used in the calculation typically assumes a couple with two children, with both parents working, which implies that the living wage is calculated for a single-income worker supporting a family of four at a level equivalent to half of the household living wage.

The Anker Methodology is not without its critics. Some commentators argue that the assumption of a two-child nuclear family with two working adults does not accurately reflect the diversity of household structures in Bangladesh, where single-parent households, households with more than two children, and households providing support to elderly relatives are common. If the reference family is larger than assumed, the actual living wage needed to support that family would be higher than the Anker calculation suggests. Conversely, if both parents in a two-earner household earn the living wage, the household income would be twice the living wage, which would provide a very comfortable standard of living by Bangladeshi standards, suggesting that the individual living wage calculation may be conservative.

For Bangladesh specifically, the GLWC's most recent Anker-Methodology-based estimates, published in 2023 and updated in 2024, calculate the living wage for the Dhaka region garment sector at approximately Taka 32,000 to 34,000 per month in 2024 prices. This figure represents the wage that a single garment worker would need to earn to provide a decent standard of living for a household of four. Given that the current minimum wage is Taka 12,500, and even after the 2025 adjustment approximately Taka 13,750, the gap between the legal minimum wage and the calculated living wage is enormous: the minimum wage represents less than 45 percent of the living wage.

The Asia Floor Wage, a methodology developed by the Asia Floor Wage Alliance (AFWA) to provide a comparable living wage benchmark across Asian garment-producing countries, produces similar estimates. The AFWA methodology calculates the living wage based on the food needs of three consumption units (where one consumption unit is one adult equivalent), a standard food basket costed at local market prices, and a multiplier to account for non-food needs. The AFWA's 2023 estimate for Bangladesh was approximately Taka 30,000 per month, broadly consistent with the Anker Methodology estimate.

The ILO's 2024 guidance on living wages introduces several additional considerations that are relevant to the Bangladesh context. The ILO guidance emphasizes the importance of using a participatory methodology that involves workers themselves in defining what constitutes a decent standard of living, rather than imposing an external standard. It also emphasizes the importance of accounting for gender in living wage calculations, recognizing that women workers face additional costs and constraints, including the costs of childcare, that may not be fully captured in standard living wage calculations based on aggregate household surveys.

## 15.2 The Legal Status of the Living Wage Standard in International and Domestic Law

The living wage, as a concept distinct from the minimum wage, occupies an ambiguous position in international and domestic law. It is recognized, at least implicitly, in the human rights instruments discussed in Chapter Eleven: the UDHR's guarantee of remuneration "ensuring an existence worthy of human dignity," the ICESCR's right to just and favorable conditions of work including "fair wages and equal remuneration for work of equal value," and the ILO's conception of "decent work" all point toward a standard of wages higher than bare subsistence. But these international norms are expressed at a high level of generality, and they are not directly enforceable as specific wage obligations in domestic law.

The ILO Conventions most directly relevant to wages are the Minimum Wage Fixing Convention, 1970 (Convention No. 131), and its accompanying Recommendation (No. 135). Convention 131, which Bangladesh has ratified, requires states that have ratified it to create a system of minimum wages and to give adequate weight to "the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups." This standard clearly implies that minimum wages should be calibrated to the needs of workers and their families, not merely to the bare minimum for survival. But it stops short of explicitly requiring a living wage, and its implementation in Bangladesh has fallen dramatically short even of the aspirational standard it sets.

The 2024 ILO guidance on living wages, while not itself legally binding, represents an authoritative interpretation of the normative standards that member states are expected to apply in setting minimum wages. The guidance explicitly states that minimum wages should be set progressively to converge toward living wage levels, and it provides detailed methodological guidance for calculating living wages in different contexts. The guidance represents a significant development in international labour standards, and it provides a powerful normative foundation for advocacy and litigation strategies aimed at increasing minimum wages in Bangladesh.

In domestic Bangladeshi law, the living wage concept is not explicitly recognized in the BLA or in any other statute. The BLA's minimum wage provisions, as noted above, require the Minimum Wages Board to consider the "cost of living and the standard of living of workers in similar industries," a standard that is, as argued above, capable of supporting a living wage interpretation. But the courts have not yet been called upon to interpret this provision in light of the international human rights obligation to ensure wages sufficient for a dignified life, and the Board has consistently applied it in a minimalist way that systematically underweights workers' needs.

The constitutional dimension of the living wage question deserves careful analysis. Article 20 of the Constitution of Bangladesh provides that "work is a right and a duty of every citizen capable of working, and everyone shall be remunerated for his work." Article 14 provides that the state shall endeavour to ensure the fundamental principle of "the emancipation of the toiling masses of workers and peasants from all forms of exploitation." These provisions, read together with the Fundamental Principles of State Policy and the international human rights obligations that form part of Bangladesh's constitutional environment, could support a constitutional claim that the state is obligated to ensure that minimum wages are set at a level sufficient to eliminate exploitation and to provide genuine remuneration for workers' contributions to social wealth.

The High Court Division has not yet directly addressed the constitutional dimensions of the minimum wage level, though it has addressed enforcement-related issues in several cases. A well-constructed public interest litigation challenging the adequacy of the minimum wage in light of Bangladesh's constitutional and treaty obligations could potentially produce a significant judicial contribution to the development of the living wage as a constitutional standard. This is a direction for future legal advocacy that the analysis in this Part suggests is both legally grounded and practically important.

### 15.3 The Supply Chain Dimension: Brand Responsibility and Enabling Environments for Living Wages

The analysis of the living wage in Bangladesh cannot be confined to the relationship between the Bangladeshi state and Bangladeshi employers. The conditions of service of Bangladeshi garment workers are substantially shaped by the purchasing practices of the international brands and retailers who source from Bangladesh, and any serious strategy for achieving living wages for garment workers must address the role of these brands.

The argument that brands bear responsibility for the wages paid to workers in their supply chains has been articulated with increasing sophistication in both the academic literature and in international policy frameworks. The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, establish that companies have a responsibility to respect human rights throughout their operations and supply chains. The UNGPs require companies to conduct human rights due diligence, identify and address human rights risks in their supply chains, and provide for or cooperate in remediation of human rights violations. Since the right to a living wage is recognized as a human right in international law, the UNGPs' due diligence framework applies to wage conditions in supply chains.

The translation of the UNGPs from a voluntary framework into binding legal obligations has advanced significantly in recent years, with the enactment of mandatory human rights due diligence legislation in several countries. The German Supply Chain Due Diligence Act, which came into force in January 2023 and extends to companies with 1,000 or more employees in Germany that have supply chains in countries including Bangladesh, requires companies to identify, prevent, and remedy human rights violations in their supply chains, including violations related to wages and working conditions. Non-compliance can result in fines of up to 2 percent of annual global turnover, a penalty that is potentially very significant for large corporations.

The EU Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024, goes further than the German Act in several respects. The CSDDD, which will apply to large EU companies with operations in third countries including Bangladesh, requires companies to conduct due diligence on environmental as well as human rights impacts, to develop and implement transition plans aligned with the Paris Agreement, and to be liable for damages caused by failures of due diligence. Crucially, the CSDDD, in its final adopted text, explicitly includes the right to adequate wages as part of the human rights standards that companies must address in their due diligence processes. While the precise interpretation of this requirement will be developed through implementation guidance and potentially through litigation, it represents a significant advance in the legal framework for supply chain accountability for wages.

The practical mechanisms through which brands can enable living wages in their supply chains include, at minimum, the following: paying prices to suppliers that are sufficient to cover the cost of living wages; committing publicly to sourcing from specific suppliers over a sufficient time horizon to enable those suppliers to invest in higher wages; jointly negotiating wage standards with suppliers and worker representatives through industry-level mechanisms; participating in and funding industry-wide living wage initiatives; and using their market power to advocate within the Minimum Wages Board process for wage levels consistent with the living wage standard.

Some brands have begun to take steps in these directions. The ACT (Action, Collaboration, Transformation) initiative, which involves a number of major international brands and the global union federation IndustriALL, has committed to working toward industry bargaining in garment-producing countries that sets wages at living wage levels. While progress toward this goal in Bangladesh has been slow, the framework exists for more ambitious action, and the legal and political environment created by the CSDDD and the German Supply Chain Act creates new incentives for brands to take their supply chain wage responsibilities more seriously.

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## CHAPTER SIXTEEN: REFORMING THE MINIMUM WAGE SYSTEM: INSTITUTIONAL DESIGN, LEGAL STANDARDS, AND POLITICAL STRATEGIES

### 16.1 The Institutional Architecture of Minimum Wage-Setting: Critical Analysis and Comparison

The effectiveness of minimum wage law depends not only on the level at which the minimum is set but on the institutional processes through which that level is determined and revised. A minimum wage-setting institution that is genuinely independent, that is adequately resourced, that is structured to give genuine weight to workers' interests, and that operates transparently and with access to the best available empirical information, will tend to produce minimum wage levels that better reflect the needs of workers than an institution that is politically captured, structurally biased toward employer interests, or operating under conditions of systematic information asymmetry.

The current Minimum Wages Board architecture in Bangladesh has several significant institutional weaknesses that have been identified by the ILO, by labour researchers, and by the workers' organizations that participate in its processes. These weaknesses include: the formal tripartism that gives employers and workers equal representation but does not address the practical power asymmetry between employer and worker representatives; the government's power to delay or modify Board recommendations before they are given effect through gazette notification; the absence of any statutory timeline for periodic wage revision; the lack of automatic indexation to an objective cost-of-living measure; and the inadequacy of the Board's research and analytical resources relative to the complexity of the wage-setting task.

The comparative analysis of minimum wage-setting institutions in other jurisdictions provides important lessons for institutional reform. The UK Low Pay Commission (LPC), established in 1997, is widely regarded as one of the most effective minimum wage-setting institutions in the world. The LPC is an independent advisory body with a statutory mandate to monitor the minimum wage and to make recommendations for its revision. It is composed of three employer representatives, three worker representatives, and three independent experts, with a chair who is typically a senior academic economist. The LPC has a dedicated research budget, commissions extensive independent research on the effects of the minimum wage, and publishes its analysis and recommendations with full transparency. Its recommendations are advisory rather than binding, but the government has consistently accepted them, creating a de facto independent process with strong political credibility.

The LPC's design avoids several of the weaknesses of the Bangladeshi system. Its research capacity is far superior, enabling it to make evidence-based recommendations that are resistant to employer lobbying based on unsupported assertions about negative employment effects. Its transparency, including the publication of detailed reasoning for its recommendations, creates public accountability that disciplines both the Commission and the government. And its track record of independence has created a degree of political credibility that makes it difficult for any government to override its recommendations without significant political cost.

A second important comparative example is Australia's Fair Work Commission, which succeeded the Australian Industrial Relations Commission in 2009 and has responsibility for setting the National Minimum Wage through an annual review process. The Fair Work Commission's minimum wage panel conducts an extensive annual inquiry, taking evidence from employers, worker organizations, government agencies, and independent researchers. Its process is highly proceduralized, with clear evidentiary standards and a formal decision-making process that is subject to judicial review for procedural errors.

The Australian experience is particularly instructive because Australia has maintained a system of legally enforceable minimum wages substantially higher, in relative terms, than most comparable economies, with the National Minimum Wage set at a level closer to the living wage than in most countries. The experience of the Australian economy under this system provides empirical evidence that high minimum wages are compatible with strong economic growth, high employment, and a competitive internationally integrated economy, contrary to the predictions of critics of minimum wage legislation.

The third comparative example worth examining is the Cambodian experience, which is directly relevant as a competing garment-producing economy that has implemented an unusually transparent and worker-empowering minimum wage-setting process since 2013. Cambodia's minimum wage determination process involves annual negotiations between government, employers, and workers, supported by a Labour Advisory Committee. The process has resulted in sustained real wage growth through the period from 2013 to 2019, with the nominal minimum wage increasing from USD 80 per month in 2013 to USD 182 per month in 2019, representing a real increase of approximately 60 percent. This wage growth did not lead to the job losses predicted by the neoclassical model; instead, Cambodia's garment sector continued to grow strongly, with significant improvements in both employment and export volumes.

The Cambodian experience suggests that the competitive argument against significant minimum wage increases in Bangladesh's garment sector is empirically weak, and that a more ambitious and more systematic approach to minimum wage revision, oriented toward progressive convergence with the living wage, is both feasible and desirable.

## 16.2 Automatic Indexation and the Living Wage Commitment: A Legal and Economic Analysis

One of the most important structural reforms needed in Bangladesh's minimum wage system is the introduction of automatic indexation of the minimum wage to an objective measure of inflation and living costs. The current system, in which the minimum wage is revised only when the Minimum Wages Board completes a formal review process, means that in practice the minimum wage is revised only every four or five years, and that during the inter-review period, inflation erodes its real value substantially. The Taka 8,000 minimum wage set in 2019 had, by 2023, lost approximately 25 to 30 percent of its real value as a result of inflation, representing a significant real wage cut for workers who had received no increase.

The introduction of automatic indexation would ensure that the real value of the minimum wage is protected against inflation in the periods between formal reviews. The indexation could be tied to the consumer price index or to a specific cost-of-living measure for garment workers, such as a basket of goods and services identified through living wage surveys. Several jurisdictions have adopted automatic indexation: France's Salaire Minimum Interprofessionnel de Croissance (SMIC) is automatically adjusted annually in line with consumer price inflation and half the increase in average wages, and it is supplemented by additional increases through a formal review process. Germany's minimum wage, introduced in 2015, is revised biennially by an independent commission that considers economic conditions, and it has a mechanism for exceptional increases when warranted by living cost increases.

The legal framework for automatic indexation in Bangladesh could be established through an amendment to the BLA that creates a statutory formula for annual adjustments. The formula could provide for: an automatic annual adjustment to maintain the real value of the minimum wage against the consumer price index; a statutory requirement for a comprehensive living wage review at least every three years; and a statutory commitment that the minimum wage will converge toward the living wage standard over a specified time horizon.

The political economy of automatic indexation is complex. Employers can be expected to resist it, on the ground that automatic increases will reduce their ability to control labour costs. But automatic indexation has the advantage of depoliticizing the inter-review adjustments, removing them from the annual political contestation that currently characterizes each revision cycle and reducing the incentive for strikes and protests over wage erosion between reviews.

### 16.3 Reform of the Minimum Wages Board: Independence, Representation, and Research Capacity

The reform of the institutional architecture of the Minimum Wages Board is a necessary precondition for more effective minimum wage-setting. The reforms needed include changes to the Board's composition, its research and analytical capacity, its mandate and decision-making criteria, and its relationship to the government.

On composition, the current tripartite structure gives employers and workers formally equal representation, but in practice the worker representatives on the Board are systematically disadvantaged relative to their employer counterparts. Employer organizations are typically better resourced, have better access to legal and economic expertise, and have closer relationships with the government officials who ultimately make the wage decisions. Worker representatives often lack the research support and expert advice necessary to effectively present and defend their positions. The reform of the Board should address this imbalance through: the provision of independent research support to worker representatives; the requirement that any economic analysis presented by employers to the Board be made publicly available for independent scrutiny; and the introduction of independent expert members with specific expertise in labour economics, living standards measurement, and comparative wage analysis.

On research capacity, the Board currently lacks the in-house analytical resources to conduct independent assessments of the economic effects of different wage levels. It is largely dependent on research presented by the parties, which is inevitably shaped by the interests of those parties. The establishment of an independent research unit with the capacity to conduct rigorous empirical analysis of living costs, employment effects, and productivity trends would substantially improve the quality of the Board's decision-making.

On the mandate, the current statutory requirement to consider "the cost of living and the standard of living of workers in similar industries" should be amended to make explicit reference to the international human rights standard of wages sufficient for a decent life for the worker and her family, to the ILO's 2024 living wage guidance, and to the progressive convergence of the minimum wage toward the living wage as a long-term objective of wage policy. This amendment would not compel the Board to immediately set the minimum wage at the living wage level, but

it would create a statutory framework that requires the Board to take the living wage as the relevant benchmark and to justify any departure from it by reference to specific economic evidence.

On the relationship with the government, the Board's recommendations should be made binding unless the government can demonstrate, with published reasoning and evidence, that accepting them would cause serious and demonstrable harm to the national economy. The current system, in which the government can simply modify or reject Board recommendations without published justification, is inconsistent with the principles of independent wage-setting and with the requirements of transparency and accountability that effective institutions require.

### 16.4 Coverage Extension: Agricultural Workers, Domestic Workers, and the Informal Economy

The minimum wage framework of the BLA, as currently structured, applies only to workers in the formal sector covered by the Act. Agricultural workers, domestic workers, and workers in the informal sector, who collectively constitute the large majority of Bangladesh's working people, have no legal minimum wage protection. This exclusion is not merely a technical gap in coverage; it is a fundamental injustice that leaves the most vulnerable workers entirely without the legal protection of a wage floor.

The extension of minimum wage coverage to agricultural workers is a legal and political challenge of the first order. Agriculture employs approximately 40 percent of Bangladesh's workforce, and agricultural wages are among the lowest in the economy. The barriers to extending minimum wage coverage to agriculture include: the diversity of agricultural employment, ranging from small family farms to large commercial operations; the seasonality of much agricultural work; the prevalence of informal and in-kind payment arrangements; and the intense political sensitivity of any measure that increases costs for small farmers who are themselves among the poor.

Nonetheless, the extension of minimum wage protection to agriculture is both legally required, by the international human rights standards that Bangladesh has accepted, and practically necessary, if the minimum wage framework is to function as a genuine floor beneath wages rather than as a protection for a privileged formal sector workforce. The development of a sector-specific minimum wage for agriculture, tailored to the specific conditions of agricultural employment and enforced through a mechanism adapted to the particular realities of rural labour markets, is a priority reform that has been recommended by the ILO and by successive analyses of Bangladesh's labour law framework.

The extension of minimum wage protection to domestic workers raises different but equally important challenges. Domestic workers, who are employed in private households, are in many ways the most vulnerable workers in Bangladesh's labour market: they are isolated from other workers, working in the private domestic sphere, which makes organization and collective action extremely difficult; they are predominantly women, and often young women from rural areas who lack the social networks and information necessary to assert their rights; and they are

subject to forms of exploitation that are not adequately captured by the framework of the formal employment relationship.

The ILO's Domestic Workers Convention, 2011 (Convention No. 189), which Bangladesh has not yet ratified, establishes a comprehensive framework of rights for domestic workers, including the right to the minimum wage. Ratification and implementation of Convention 189 would require the extension of minimum wage protection to domestic workers, along with appropriate provisions for working time, rest periods, privacy, and freedom from abuse. The development of effective enforcement mechanisms for domestic workers' minimum wages, given the private and dispersed nature of domestic employment, requires innovative approaches that go beyond conventional factory inspection.

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## CHAPTER SEVENTEEN: POLITICAL PHILOSOPHY OF MINIMUM WAGES: RECOGNITION, REDISTRIBUTION, AND THE CLAIMS OF LABOUR

### 17.1 The Politics of Recognition: Minimum Wages as a Symbolic and Expressive Claim

The minimum wage debate is not only about economics. It is also about politics, about culture, and about the symbolic and expressive dimensions of legal recognition. When garment workers in Bangladesh demand a wage sufficient to live with dignity, they are making not only an economic claim, that they need more money to meet their material needs, but a political and moral claim: that their labour deserves recognition, that they are not merely instruments of production but human beings of equal worth, and that the law must reflect this equality of worth in its treatment of them.

Axel Honneth's theory of recognition, developed in The Struggle for Recognition (1992) and subsequent works, provides a powerful framework for understanding the political dimension of minimum wage struggles. Honneth argues that social conflicts, including labour conflicts, are at their deepest level struggles for recognition: struggles to have one's identity, dignity, and contributions to social life acknowledged and respected. The worker who is paid a wage insufficient for a decent life is not merely economically disadvantaged; she is symbolically disrespected, denied the recognition that her contribution to social wealth deserves.

Applied to the Bangladesh garment sector, Honneth's analysis illuminates the cultural and political dimensions of the minimum wage struggle that are often ignored in purely economic accounts. The garment workers who took to the streets in October and November 2023 were not only demanding more money; they were demanding recognition of their humanity, of their contribution to Bangladesh's export economy, and of their right to share in the prosperity that their labour has created. The violence with which these demands were met, the police repression, the criminal charges, the deaths, represented not only a failure of legal enforcement but a failure of recognition, a denial of the workers' claim to be treated as citizens with rights rather than as factors of production to be managed and controlled.

The sociology of work developed by scholars such as Michael Burawoy, Beverly Silver, and Richard Sennett also enriches the political analysis of minimum wages. Burawoy's concept of the "manufacture of consent," developed in his 1979 study of a Chicago machine shop, describes the mechanisms through which workers come to accept and even support the conditions of their own exploitation, through the development of workplace games, informal hierarchies, and ideologies that make the capitalist organization of production appear natural and legitimate. In the Bangladesh garment sector, the mechanisms of consent have historically included the ideology of development and national progress, which constructs garment work as an opportunity for poor women to escape rural poverty and to contribute to the economic modernization of the country, and which frames complaints about wages and conditions as threats to this developmental project.

Nancy Fraser's framework of justice as involving both redistribution and recognition provides a synthesis of the economic and cultural dimensions of the minimum wage struggle. Fraser argues that genuine social justice requires both redistribution, the fair distribution of material resources including wages, and recognition, the equal respect for the dignity and identity of all members of society. The minimum wage struggle in Bangladesh involves both dimensions: it is a demand for a fairer distribution of the income generated by the garment industry, and it is a demand for the recognition of workers' dignity and humanity against a system that has systematically treated them as dispensable inputs to production.

### 17.2 Democratic Theory and the Minimum Wage: Participation, Voice, and the Political Economy of Labour

The minimum wage is not only an economic and symbolic issue; it is also a question of democratic theory. In a democratic polity, the citizens' voice should shape the fundamental conditions of economic life, including the conditions under which they sell their labour power. The minimum wage-setting process, if it is to be democratically legitimate, must genuinely reflect the voices of those most affected by it, above all the workers whose wages it determines.

The current minimum wage-setting process in Bangladesh falls far short of this democratic ideal. The formal tripartism of the Minimum Wages Board gives workers' organizations a voice in the process, but as argued above, the practical conditions of worker representation, including the resource imbalance between worker and employer organizations, the intimidation of worker representatives, and the government's ultimate control over the final wage decision, mean that the process does not genuinely reflect the preferences and interests of the workers it is supposed to serve.

The development of more genuinely democratic processes for minimum wage-setting requires attention to several dimensions of democratic theory. First, it requires effective equality of voice: the conditions of worker representation must be reformed to ensure that worker voices have genuine influence over outcomes, not merely formal representation in a process dominated by employer and state interests. Second, it requires transparency and accountability: the reasoning and evidence that inform wage decisions must be publicly available and subject to genuine public scrutiny. Third, it requires that affected workers themselves, not only their organizational

representatives, have meaningful opportunities to participate in the process through consultations, surveys, and other participatory mechanisms.

Alan Bogg's republican theory of trade union rights, developed in his extensive scholarship on collective labour law, provides a particularly relevant framework. Bogg argues that trade unions are essential democratic institutions, that they are not merely economic organizations that aggregate the bargaining power of individual workers but political institutions that give workers collective voice in the governance of the conditions of their working lives. The minimum wage-setting process, on this account, should be understood as a form of quasi-legislative deliberation in which workers' democratic claims are represented through their trade unions, and the quality of that representation depends on the health and independence of the trade union movement.

The health of Bangladesh's trade union movement is, as documented in Part One and Part Two of this textbook, deeply compromised by decades of repression, fragmentation, and employer interference. The effective democratization of the minimum wage-setting process therefore requires not only institutional reforms to the Minimum Wages Board but deeper reforms to the conditions for trade union organizing, including the protection of freedom of association and collective bargaining rights, the effective enforcement of anti-union discrimination provisions, and the development of legal frameworks that enable genuine sectoral bargaining in the garment industry.

### 17.3 The Political Economy of the Interim Government and Labour Reform: The Post-July 2024 Context

The political transformation of August 2024, when the Sheikh Hasina government fell following the mass uprising now known as the July Revolution, created a new political context for labour law reform in Bangladesh that deserves careful analysis. The interim government headed by Muhammad Yunus came to power with substantial goodwill from the workers' movement, both because the Hasina government had been deeply hostile to workers' organizing rights and because the Yunus government had made commitments to international partners about labour law reform as part of its engagement with the ILO and with the EU regarding market access.

The Labour Reform Commission established by the interim government in late 2024 was mandated to review the entire framework of Bangladesh's labour law and to make comprehensive recommendations for reform. The Commission's deliberations and recommendations have fed into the drafting of the Bangladesh Labour (Amendment) Bill 2026, which passed Parliament in early 2026. The 2026 Amendment represents the most significant legislative revision of Bangladesh's labour law in over a decade, though its adequacy on wages and collective bargaining remains the subject of intense debate.

On minimum wages, the 2026 Amendment introduces several significant changes. It establishes a more explicit statutory timeline for minimum wage revision, requiring the Minimum Wages Board to complete a review at least every three years. It strengthens the independence of the Board by introducing new requirements for the transparency of its deliberations and for the publication of its reasoning when it makes a recommendation. And it introduces a provision requiring the Board to take into account the cost of a nutritious diet, decent housing, and other

essential needs as determined by independent living wage surveys, in addition to the existing requirement to consider the cost of living. These changes represent a partial move toward the living wage standard, though they stop short of establishing the living wage as the legal benchmark for minimum wage-setting.

On collective bargaining, the 2026 Amendment makes several changes to the framework for trade union registration and recognition that have been widely welcomed by the workers' movement. It reduces the minimum membership threshold for trade union registration in the garment sector. It introduces stronger protections against anti-union discrimination. And it includes new provisions prohibiting employer interference in trade union activities, including the blacklisting of union members and the establishment of company-controlled unions. These provisions, if effectively enforced, would significantly improve the conditions for free trade union activity in Bangladesh's garment sector, with positive downstream effects on the capacity of workers to assert their interests in the minimum wage-setting process.

However, significant concerns remain about the adequacy of the 2026 reforms. The minimum wage level itself has not been addressed: the Act does not commit to closing the gap between the legal minimum and the living wage within any specified time horizon. The enforcement apparatus remains under-resourced. And the political will of the interim government, which is by its nature temporary, to sustain reforms that face intense opposition from powerful employer interests is uncertain.

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## CHAPTER EIGHTEEN: THE WAGE QUESTION AND CONSTITUTIONAL LAW: RIGHTS, REMEDIES, AND JUDICIAL ACTIVISM

### 18.1 Constitutional Foundations of the Right to a Just Wage in Bangladesh

The Constitution of Bangladesh, 1972, does not contain an explicit right to a minimum wage or to a living wage. But it does contain a range of provisions that, read together with the international human rights obligations of the Bangladeshi state, provide a constitutional foundation for the claim that the state is obligated to ensure that workers receive wages sufficient to meet their fundamental needs.

The most relevant constitutional provisions are found in Part II (Fundamental Principles of State Policy) and Part III (Fundamental Rights). Part II includes Article 14, which provides that "it shall be a fundamental responsibility of the State to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation"; Article 15, which provides that the state shall pursue a policy directed toward securing to its citizens the provision of the basic necessities of life, including food, clothing, shelter, education, and medical care; and Article 20, which provides that "work is a right and a duty of every citizen capable of working, and everyone shall be remunerated for his work."

These provisions are categorized in the Constitution as Fundamental Principles of State Policy rather than as directly enforceable Fundamental Rights. Article 8(2) provides that the principles

contained in Part II shall be fundamental to the governance of Bangladesh, shall be applied by the State in making laws, shall be a guide to the interpretation of the Constitution and other laws, and shall form the basis of the work of the State, but that they shall not be judicially enforceable. This constitutional architecture, which is shared with the Indian Constitution and reflects the influence of the Irish Constitution's "Directive Principles of State Policy" on the constitutional design of the Indian subcontinent, creates a distinction between justiciable fundamental rights and non-justiciable directive principles that has been the subject of extensive judicial and academic debate.

The orthodox position, that Part II principles are not judicially enforceable, has been progressively undermined by the activism of the High Court Division and the Appellate Division in using Part II principles as interpretive guides in constitutional cases, as mandatory criteria for assessing the validity of legislation, and, in some cases, as independent grounds for judicial review. The High Court Division's decisions in environmental law cases, in cases involving the rights of marginalized groups, and in cases involving the conditions of workers in special economic zones, suggest that the Court has been moving, tentatively but discernibly, toward a more robust engagement with Part II principles as guides to the substantive content of constitutional rights.

The argument for treating the right to a living wage as constitutionally required in Bangladesh draws on several converging lines of analysis. First, Article 27 of the Constitution guarantees all citizens equality before the law and equal protection of the laws. A minimum wage that is set far below the living wage violates the equal protection principle, if it can be shown that the minimum wage-setting process systematically discriminates against the interests of workers relative to those of employers and international buyers. Second, Article 31 guarantees the right to protection of the law, which has been interpreted by the courts to protect against arbitrary and unreasonable state action. A state that sets minimum wages far below independently calculated living wage levels, in the face of evidence of the resulting violations of workers' human dignity, could be argued to be acting arbitrarily and unreasonably in its exercise of the wage-setting function. Third, the international human rights instruments that Bangladesh has ratified, including the ICESCR, form part of the constitutional environment within which the Constitution must be interpreted, and the right to wages sufficient for a decent life recognized in those instruments should be read into the constitutional guarantee of equal protection and the right to life.

## 18.2 Public Interest Litigation and the Minimum Wage: Precedents and Possibilities

The mechanism of public interest litigation (PIL) under Article 102 of the Constitution has been used extensively by civil society organizations and concerned individuals to challenge state action and inaction that violates constitutional rights. PIL has been used in cases involving the rights of children, women, indigenous people, and environmental standards, and several PIL decisions have had significant implications for the conditions of workers.

The most directly relevant precedents in the labour law field include the BNWLA case on sexual harassment in the workplace, in which the High Court Division issued detailed guidelines for the prevention and redress of workplace sexual harassment that went significantly beyond anything

in the statutory framework. The court in that case used its PIL jurisdiction to fill a legislative gap, reasoning that the constitutional guarantee of equality and the protection against arbitrary state action required the state to take positive measures to protect women workers from a pervasive violation of their rights.

A PIL challenging the adequacy of the garment sector minimum wage could be constructed on several possible grounds. First, it could argue that the wage-setting process violates procedural constitutional requirements of participation and transparency, by failing to give genuine weight to workers' representations and by allowing employer interests to dominate the process. Second, it could argue that the resulting minimum wage is substantively unconstitutional, in that it is demonstrably insufficient to satisfy workers' constitutional right to protection against exploitation and to secure the basic necessities of life recognized in Article 15. Third, it could argue that the state's failure to enforce the living wage standard violates Bangladesh's treaty obligations under the ICESCR, which create obligations that are part of the constitutional environment.

The success of such a PIL would depend on the willingness of the courts to engage substantively with the economic dimensions of constitutional rights, a willingness that has been variable and often limited in the history of Bangladeshi constitutional jurisprudence. The courts have generally been more willing to engage with procedural dimensions of constitutional rights, requiring that statutory powers be exercised in accordance with principles of fairness and transparency, than with substantive constitutional minimums that require the courts to specify particular outcomes. The development of a more robust constitutional jurisprudence of socio-economic rights in Bangladesh is a longer-term project that requires sustained judicial engagement with the philosophical and theoretical dimensions of rights that this textbook has been exploring.

The comparative constitutional experience of South Africa is particularly instructive in this regard. The South African Constitutional Court, in a series of landmark decisions including Government of the Republic of South Africa v. Grootboom (2000) and Minister of Health v. Treatment Action Campaign (2002), developed a sophisticated jurisprudence of socio-economic rights that combines judicial recognition of enforceable minimum core obligations with deference to legislative and executive policy choices within those constraints. The "minimum core" doctrine developed in these cases holds that each socio-economic right protected in the Constitution contains a core content, a minimum that must be immediately realized regardless of resource constraints, that is judicially enforceable.

Applied to the right to a just wage in Bangladesh, a minimum core approach would hold that the constitutional obligation requires, at minimum, that wages not be set at a level that demonstrably denies workers the means to meet their basic subsistence needs. The current Bangladeshi minimum wage, which as noted is approximately 38 percent of the independently calculated living wage, may well fall below even the minimum core standard of bare subsistence, particularly given the documented prevalence of child labour, debt, and malnutrition among garment workers' families.

### 18.3 The Role of Labour Courts in Enforcing the Minimum Wage Framework

The Labour Court system, established under Chapter 13 of the BLA, is the primary judicial institution for the enforcement of individual workers' rights under the Act, including the right to receive at least the minimum wage. The effectiveness of the Labour Courts in enforcing the minimum wage framework has, historically, been severely limited by a combination of structural weaknesses: inadequate resources, excessive caseloads, slow processes, and the practical inaccessibility of the courts for workers who lack financial resources and information about their legal rights.

The systemic problems of the Labour Court system have been documented extensively. Workers who seek to enforce minimum wage claims face a process that can take years to produce a result, during which time they are often unable to maintain their employment with the respondent employer and may face difficulty in securing alternative employment. The cost of legal representation is a significant barrier for workers on minimum wages. And the institutional culture of the Labour Courts has not always been sympathetic to workers' claims.

The Bangladesh Labour (Amendment) Bill 2026 includes several provisions aimed at improving the efficiency and accessibility of the Labour Courts. It introduces a statutory time limit for the resolution of minimum wage disputes, requiring courts to determine such cases within 90 days of filing. It expands the jurisdiction of Labour Court Inspectors to issue compliance orders without requiring court proceedings in straightforward cases of minimum wage non-payment. And it establishes a legal aid fund for workers pursuing minimum wage and other labour rights claims.

These reforms are welcome, but they do not address all of the structural problems of the Labour Court system. The 90-day time limit, if it is to be meaningful, requires a significant increase in the resources available to Labour Courts, including the appointment of additional judges and administrative staff. The compliance order mechanism, while potentially very efficient for straightforward cases, requires Labour Court Inspectors who are competent, independent, and willing to use their powers against powerful employers, a requirement that will be difficult to meet without significant changes in the culture and oversight of the inspectorate. And the legal aid fund, while important in principle, will only be effective if it is adequately funded and if the legal aid services it supports are of genuinely high quality.

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## CHAPTER NINETEEN: THE WAGES OF TEA GARDEN WORKERS: A DISTINCTIVE SYSTEM AND ITS REFORM

### 19.1 The Tea Garden Sector: Historical Isolation and Structural Vulnerability

The tea gardens of the Sylhet and Chittagong Hill Tracts regions of Bangladesh are home to a workforce of approximately 150,000 permanent workers, with a total population of garden residents, including temporary workers and dependents, of over 400,000. The tea garden workers constitute one of the most historically isolated, structurally vulnerable, and systematically underpaid categories of workers in the entire Bangladeshi labour force.

The history of the tea garden workforce is a history of colonial coercion and postcolonial neglect. The tea garden labour force was constituted through the forcible recruitment of workers from the tribal and lower-caste communities of central India and Bengal during the colonial period. Workers were brought to the tea gardens under contracts that bound them to the garden for extended periods and subjected them to criminal penalties for desertion, a system that was, in its essential structure, a form of indentured labour. The Workmen's Breach of Contract Act, 1859, applied to tea garden workers and subjected those who left their employment to imprisonment.

Although the formal legal apparatus of coercion was dismantled in the early twentieth century, the structural conditions of the tea garden workforce remained deeply constrained. Workers lived in the gardens in accommodation provided by the employers, received part of their wages in kind, were dependent on the gardens for healthcare, education, and other social services, and had limited knowledge of the outside labour market or the legal rights to which they were entitled. These conditions of dependence, combined with the geographic isolation of many gardens, created a structural vulnerability that persisted long after the formal abolition of coercive contracts.

The Tea Plantation Workers (Service Conditions) Act, 1962, established a separate legal framework for the conditions of service of tea garden workers, distinct from the general industrial labour law framework. This separate framework reflected both the particular conditions of tea garden employment and the political sensitivity of the tea industry, which has historically been dominated by a small number of powerful plantation companies with close relationships with successive Bangladeshi governments.

The minimum wage provisions applicable to tea garden workers have historically been set through the Tea Garden Workers' Wage Board, a body analogous to the Minimum Wages Board for other industries. The wages determined by this Board have consistently been among the lowest minimum wages in the entire Bangladeshi labour force. The daily cash wage of tea garden workers was, as of 2023, Taka 120 per day, which the Supreme Court of Bangladesh in a landmark 2019 decision had directed should be increased following prolonged agitation. The subsequent increase to Taka 170 per day in 2022 represented a significant improvement but left tea garden workers among the lowest-paid workers in the country.

The tea garden minimum wage situation illustrates, in an extreme form, many of the pathologies of the general minimum wage framework: wages set far below living wage levels, enforcement mechanisms adapted to the structural realities of the workforce, and the systematic exclusion of one of the most vulnerable workforces from the mainstream protections of the Bangladesh Labour Act.

## 19.2 Jurisprudential Dimensions: The Status of Tea Garden Workers Under Bangladesh Constitutional Law

The constitutional status of tea garden workers in Bangladesh raises profound questions of citizenship, belonging, and the relationship between labour rights and political membership. The majority of the permanent tea garden workforce are descendants of the workers brought to Bengal during the colonial period; they are classified as indigenous or ethnic minority

communities but are also recognized as citizens of Bangladesh. Their labour rights are formally protected by the Constitution and by international human rights standards, but the practical realization of these rights has been systematically compromised by the conditions of their employment and by the historical power of the tea plantation industry.

The High Court Division has intervened in several cases involving the conditions of tea garden workers, most significantly in the 2019 decision on the minimum wage. In that case, the Court accepted a petition from a labour rights organization arguing that the minimum wage set for tea garden workers was inconsistent with the constitutional obligation to protect workers from exploitation and to ensure their basic welfare. The Court's direction to increase the daily wage represented an important use of the PIL jurisdiction to enforce constitutional principles in the wage-setting context, and it provides an important precedent for the argument that the courts have both the authority and the responsibility to review the adequacy of minimum wages against constitutional standards.

The tea garden case also illustrates the intersection of labour rights and indigenous peoples' rights that is a recurring theme in South Asian labour law scholarship. The tea garden workers are in many respects an indigenous or tribal community, with distinctive cultural practices, languages, and identities that are bound up with their history as a plantation workforce. Their labour rights claims are therefore not merely economic claims but claims to cultural survival and to the continuation of a community that has been formed through a history of coercion and displacement. The recognition of this cultural and historical dimension of their labour rights claims requires an approach that goes beyond the narrowly economic analysis of minimum wages and engages with the postcolonial theory of rights discussed in Part One of this textbook.

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## CHAPTER TWENTY: THE INFORMAL ECONOMY, PLATFORM WORK, AND THE CHALLENGE OF MINIMUM WAGES IN THE TWENTY-FIRST CENTURY

### 20.1 Wages in the Informal Economy: The Limits of the Legal Minimum

The formal minimum wage framework of the BLA applies to workers in the formal sector. But the large majority of Bangladesh's working population, estimated at between 85 and 90 percent of the total workforce, work in the informal economy, where the legal minimum wage provides no protection whatsoever. The informal economy encompasses agricultural workers, domestic workers, street vendors, rickshaw pullers, construction workers, home-based workers producing handicrafts and garments, and a vast range of other occupations that collectively support the livelihoods of millions of Bangladeshis.

The wages paid in the informal economy are, in most cases, significantly below even the inadequate formal sector minimum wage. A construction worker in Dhaka may earn Taka 400 to 600 per day on a daily labour basis; a domestic worker in a middle-class household may receive Taka 3,000 to 5,000 per month, plus food and accommodation; a rickshaw puller typically nets Taka 200 to 400 per day after paying the rental fee for his vehicle. All of these wages are far

below the garment sector minimum wage, and far below the living wage calculated for the Dhaka area.

The challenge of extending meaningful minimum wage protection to informal sector workers is one of the most difficult problems in labour law and development policy. The informal economy is, by definition, largely invisible to the regulatory apparatus of the state: workers in informal employment lack written contracts, are often paid in cash, and their employers are typically not registered with any government agency. The enforcement mechanisms that are available for the formal sector, factory inspection, Labour Court proceedings, compliance orders, are largely ineffective in the informal economy.

Several alternative approaches to the informal economy wage problem have been explored in the comparative policy literature. Social protection floors, which provide a universal minimum income guarantee funded through taxation rather than through employer-employee contributions, can provide a form of wage floor for informal workers by ensuring that everyone, including those working at sub-minimum wages, has access to a minimum income. Bangladesh's existing social protection programmes, including the Old Age Allowance, the Widow and Distressed Women Allowance, and the Vulnerable Group Development programme, provide some protection to the most vulnerable, but they do not constitute a comprehensive social protection floor of the kind recommended by the ILO's Social Protection Floors Recommendation, 2012 (No. 202).

The development of occupational minimum wages for specific informal sector occupations, through a process of negotiation involving workers' organizations, employers, and government, has been tried in several countries. India's implementation of occupational minimum wages for categories of workers including agricultural labourers, construction workers, and domestic workers, under the Minimum Wages Act, 1948, provides a relevant example, though enforcement in rural areas has been severely limited. The development of similar occupational minimum wages for Bangladesh's most important informal sector occupations would be a meaningful extension of minimum wage protection, even if enforcement challenges remain significant.

### 20.2 Platform Work and the Emerging Gig Economy: A New Frontier for Wage Regulation

The emergence of platform-mediated work in Bangladesh, while at an earlier stage of development than in the advanced industrial economies, poses new challenges for the minimum wage framework that require legal innovation and anticipatory regulatory thinking. The platform economy in Bangladesh currently includes ride-hailing services (Pathao, Shohoz), food delivery platforms (Shohoz Food, Pathao Food), domestic cleaning and repair services, and a growing range of freelance and micro-task platforms.

Platform workers in Bangladesh are, in most cases, classified as independent contractors rather than employees, which means that they fall outside the coverage of the BLA entirely, including outside the minimum wage protections. This classification reflects the global pattern of platform companies using contractual architecture to minimize their labour law obligations, a pattern that has been challenged in courts around the world with mixed results.

The most significant legal developments on the classification of platform workers have occurred in the UK, where the Supreme Court's decision in Uber BV v. Aslam (2021) held that Uber drivers were "workers" within the meaning of UK employment legislation, entitled to minimum wage protection and holiday pay. This decision, and the subsequent decision in the IWGB v. Central Arbitration Committee cases on collective bargaining rights for gig workers, established important precedents for the recognition of platform workers as workers for legal purposes, rather than as independent contractors as platform companies claimed.

In Bangladesh, the legal framework for classifying platform workers is currently undeveloped. The BLA's definition of "worker" potentially covers platform workers who are economically dependent on a single platform, but the BLA has not been interpreted or applied in this context. The development of a clear legal framework for platform worker classification, informed by the comparative experience of the UK, EU, and other jurisdictions that have grappled with this question, is an important priority for labour law reform.

The EU Platform Work Directive, agreed in 2024, introduces a legal presumption of employment for platform workers that requires platforms to rebut the presumption by demonstrating that the worker is genuinely self-employed. This presumption reversal approach, which shifts the burden of proof from workers to platforms, is a significant legal innovation that could usefully be adopted in Bangladesh's labour law reform.

The minimum wage question for platform workers is complicated by the fact that platform workers' earnings are highly variable, depending on the number of tasks completed, the prices set by the platform, and the worker's own time and effort. A minimum wage guarantee per task, per hour, or per day would need to be designed to provide genuine protection without creating perverse incentives to limit the number of tasks available. The design of minimum wage protections appropriate to platform work requires engagement with the specific characteristics of platform labour markets, including the algorithmic management of workers, the variable and unpredictable nature of task availability, and the multiple employer relationships that many platform workers maintain.

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## CHAPTER TWENTY-ONE: JURISPRUDENTIAL SYNTHESIS AND COMPREHENSIVE REFORM BLUEPRINT FOR MINIMUM WAGES

### 21.1 The Normative Framework: Synthesizing the Philosophical, Human Rights, and Constitutional Arguments

The philosophical, jurisprudential, historical, and empirical analysis presented in this Part converges on a clear normative conclusion: the minimum wage framework of Bangladesh is profoundly inadequate, measured against any standard of philosophical justice, international human rights law, or constitutional obligation. The current minimum wage of approximately Taka 13,750 for garment workers, representing approximately 42 to 45 percent of the independently calculated living wage, is not a wage that reflects the dignity, worth, or contribution of the workers who receive it. It is a wage that reflects the structural power of

employers, the political economy of a competitive export industry, and the systematic failure of the legal and political system to give genuine weight to the interests and rights of the most vulnerable workers.

The synthesis of the capability approach, the human rights framework, the republican theory of non-domination, and the democratic theory of worker voice points toward a normative framework that requires the following from minimum wage law and policy in Bangladesh.

First, the minimum wage must be oriented, as an explicit legal objective, toward the achievement of wages sufficient for every full-time worker to enjoy a decent standard of living for herself and her family. This living wage standard, as defined by the Global Living Wage Coalition and elaborated in the ILO's 2024 living wage guidance, must be the legal benchmark against which the adequacy of the minimum wage is assessed. Departures from this standard, which may be justified by specific economic circumstances, must be explicitly justified by reference to transparent and independently verifiable economic evidence, and they must be accompanied by a legally binding commitment to a progressive pathway toward the living wage.

Second, the minimum wage-setting process must be genuinely democratic. This requires, not merely formal tripartism, but genuine equality of voice between worker and employer representatives, transparency in the deliberative process, access to independent expert analysis, and insulation of the process from political interference by governments responding to employer pressure. The democratization of the minimum wage process is both intrinsically important, as a matter of democratic theory, and instrumentally important, as a condition for the legitimacy and durability of wage decisions.

Third, automatic indexation of the minimum wage to a cost-of-living measure must be introduced, to prevent the erosion of real wages between formal reviews and to eliminate the cycle of protest, repression, and belated revision that has characterized the history of minimum wage-setting in Bangladesh.

Fourth, the coverage of the minimum wage framework must be progressively extended to all working people in Bangladesh, including agricultural workers, domestic workers, and informal sector workers. The extension of coverage must be accompanied by the development of enforcement mechanisms adapted to the specific conditions of each sector, including innovative approaches to enforcement in the informal economy.

Fifth, the role of international brands and buyers in the determination of wage conditions in their supply chains must be recognized in law and in policy. This recognition requires both domestic measures, such as supply chain transparency requirements and obligations on major buyers sourcing from Bangladesh to conduct wage due diligence, and international measures, including engagement with the implementation of the EU CSDDD and other supply chain due diligence legislation to ensure that its wage-related provisions are effectively applied to the Bangladesh context.

## 21.2 A Ten-Point Legislative and Institutional Reform Program

On the basis of the analysis in this Part, the following ten-point program of legislative and institutional reform is proposed for the minimum wage framework in Bangladesh.

The first reform is the amendment of the BLA to establish the living wage as the normative benchmark for minimum wage-setting, with a statutory commitment to progressive convergence toward the living wage within a ten-year horizon, backed by annual adjustments of not less than the rate of inflation plus two percent of the real wage gap between the current minimum wage and the calculated living wage.

The second reform is the establishment of an Independent Minimum Wages Authority, modelled on the UK Low Pay Commission and the Australian Fair Work Commission's minimum wage panel, with statutory independence from the government, an obligation to conduct and publish rigorous research on living costs and wage effects, and whose recommendations take effect unless rejected by the National Parliament through a specific resolution.

The third reform is the introduction of automatic annual indexation of the minimum wage to the Consumer Price Index, providing inflation protection between formal reviews and eliminating the cycle of real wage erosion and catch-up that has characterized the existing system.

The fourth reform is the extension of minimum wage coverage to agricultural workers, through the development of occupational minimum wages for agricultural employment calibrated to the specific conditions of agricultural labour markets in different regions of Bangladesh.

The fifth reform is the extension of minimum wage coverage to domestic workers, through the enactment of specific legislation for domestic workers' rights that implements the ILO's Domestic Workers Convention, 2011, including minimum wage, working time, and social security provisions.

The sixth reform is the development of a legal framework for platform workers that establishes a presumption of employment for economically dependent platform workers, entitling them to minimum wage protection and other core labour rights, with appropriate adaptations to the specific conditions of platform work.

The seventh reform is the establishment of an independent living wage research unit with the mandate and resources to conduct annual assessments of the living wage in different sectors and regions, using the Anker Methodology and consistent with the ILO's 2024 living wage guidance, with the results published as official statistics and made available to the Minimum Wages Authority and the public.

The eighth reform is the dramatic strengthening of the minimum wage enforcement apparatus, including a doubling of the number of labour inspectors, the introduction of risk-based inspection targeting, the development of an anonymous complaints hotline for workers to report minimum wage violations, and a significant increase in the penalties for minimum wage non-compliance to levels that create genuine deterrence.

The ninth reform is the development of a supply chain accountability framework that creates transparency obligations for major buyers sourcing from Bangladesh, requires disclosure of prices paid to suppliers, and establishes a framework of due diligence obligations consistent with the UNGPs and the EU CSDDD, under which buyers may be required to contribute to the remediation of wage violations in their supply chains.

The tenth reform is the development of a comprehensive legal aid scheme for minimum wage claims, including the establishment of a Legal Aid Fund specifically for minimum wage disputes, the development of simplified claim procedures for straightforward minimum wage non-payment cases, and the establishment of community-based legal support services accessible to informal sector workers.

### 21.3 The Long-Term Vision: The Living Wage as a Constitutional Right

The ultimate aspiration of the reform program proposed in this Part is not merely a more efficient minimum wage-setting system, though efficiency is important. It is the transformation of the constitutional and legal status of the minimum wage from a discretionary regulatory matter, in which the government balances the interests of workers against those of employers and the national economy, into a constitutional right, in which the state is legally obligated to ensure that all working people receive wages sufficient to live with dignity.

This transformation requires, in the first instance, a constitutional amendment that explicitly recognizes the right to a living wage as a fundamental right, enforceable through the courts. The constitutional right to a living wage would not be a right to any specific wage level; wages vary across sectors, regions, and time periods, and the law cannot usefully specify a fixed monetary amount as a constitutional guarantee. It would, rather, be a right to wages that are periodically determined, through a fair and democratic process, to be sufficient to enable the worker and her family to live with the dignity that the constitutional guarantee of equal worth requires.

The constitutional recognition of the right to a living wage would also have important symbolic and expressive dimensions. It would represent a formal acknowledgment by the Bangladeshi state that the workers who have built Bangladesh's export economy and generated its remarkable growth in national income deserve a share of that prosperity sufficient to live well, not merely to survive. It would represent a rejection of the logic of competitive exploitation that has kept wages in Bangladesh's garment sector at a fraction of the living wage while the industry generated enormous profits for international brands and manufacturers. And it would represent a commitment to a conception of development that treats the dignity and welfare of working people as an end in itself, not merely as a means to the aggregate increase of GDP.

The path to this constitutional transformation is long and uncertain. It requires sustained political will, the building of a broad social coalition including trade unions, civil society organizations, international partners, and enlightened elements of the business community. It requires the development of a jurisprudence of socio-economic rights that gives constitutional teeth to the commitment to workers' dignity. And it requires the sustained intellectual effort of the kind that this textbook represents: the insistence that the law of minimum wages is not merely a technical

regulatory matter but a fundamental question of justice, and that the gap between the achieved and the possible must be kept perpetually in view.

The garment workers of Bangladesh, who produce the clothing worn by hundreds of millions of people across the world, deserve wages sufficient to live with dignity. This is not a controversial political claim. It is a conclusion that follows from every serious philosophical, jurisprudential, and constitutional analysis of the conditions of human dignity and the obligations of a just legal order. The question is not whether it is true, but whether the political will and the legal imagination can be marshaled to make it legally real.

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## BIBLIOGRAPHIC NOTES FOR PART THREE

The analysis in this Part draws upon an extensive range of primary and secondary sources in political economy, jurisprudence, labour economics, and international human rights law. The following notes identify the most important sources and provide guidance for further research.

On the philosophical foundations of the living wage, the foundational texts are Pope Leo XIII's Rerum Novarum (1891) and its successors in the Catholic social teaching tradition; the legal philosophy of John Rawls, particularly A Theory of Justice (Harvard University Press, 1971) and Political Liberalism (Columbia University Press, 1993); Martha Nussbaum's Creating Capabilities: The Human Development Approach (Harvard University Press, 2011); and Amartya Sen's Development as Freedom (Oxford University Press, 1999). Philip Pettit's Republicanism: A Theory of Freedom and Government (Oxford University Press, 1997) provides the foundation for the republican analysis of domination. The most comprehensive contemporary survey of the philosophical arguments for and against the living wage is the collection edited by Hugh Collins, Gillian Lester, and Virginia Mantouvalou, Philosophical Foundations of Labour Law (Oxford University Press, 2018).

On the economics of minimum wages, the foundational empirical work is David Card and Alan Krueger, Myth and Measurement: The New Economics of the Minimum Wage (Princeton University Press, 1995). Arindrajit Dube's comprehensive survey of minimum wage research, The Economics of Minimum Wages (Report for the UK Government, 2019), provides the most authoritative overview of the current state of the empirical literature. Alan Manning's Monopsony in Motion: Imperfect Competition in Labour Markets (Princeton University Press, 2003) provides the theoretical foundations of the monopsony analysis of wage-setting. The ILO's 2022 report Employment, Wages and Productivity Trends in the Asian Garment Sector provides comparative data specifically relevant to the Bangladesh context. The Cornell Global Labor Institute's February 2025 policy brief on Bangladesh's minimum wage-setting system, authored by Jason Judd and Shikha Silliman Bhatt, is the most recent authoritative analysis of the wage-setting process and its outcomes.

On the living wage standard, the most important sources are the Global Living Wage Coalition's methodology documents and country-specific living wage estimates, available at www.globallivingwage.org; the ILO's 2024 guidance on living wages, which represents the most

authoritative international statement of the living wage standard; and Anker and Anker, Living Wages Around the World: Manual for Measurement (Edward Elgar Publishing, 2017), which provides the foundational methodology for calculating living wages.

On the Bangladesh-specific analysis, essential primary sources include the Bangladesh Labour Act, 2006 (as amended through 2026), the Bangladesh Labour Rules, 2015, and the various Minimum Wages Board gazettes specifying the applicable minimum wages in different industries. The Swedwatch briefing Paying the Price for Fashion: Securing a Living Wage for Bangladesh's Garment Workers (November 2024) provides the most recent empirical analysis of wage adequacy in the garment sector. The Clean Clothes Campaign's extensive documentation of the 2023 wage protests and their aftermath, available at cleanclothes.org, provides essential factual background. The reports of the ILO Committee of Experts on the Application of Conventions and Recommendations specifically concerning Bangladesh provide the authoritative international assessment of Bangladesh's compliance with ILO minimum wage standards.

On the legal framework for supply chain accountability, the most important developments are the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz) and the EU Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024. Martijn Scheltema and Geert van Calster's analyses of the CSDDD in the International Journal of Law and Social Justice (2024) provide the most recent and comprehensive legal commentary. The Oxford Business Law Blog has published a series of detailed analyses of the CSDDD's implications for supply chains in developing countries, including Bangladesh.

On the constitutional dimensions of minimum wages, the most relevant comparative authorities are the South African Constitutional Court decisions in Grootboom (2000) and the Treatment Action Campaign case (2002), which established the constitutional framework for the enforcement of socio-economic rights. The academic literature on socio-economic rights includes Cass Sunstein, Designing Democracy: What Constitutions Do (Oxford University Press, 2001); Frank Michelman, Brennan and Democracy (Princeton University Press, 1999); and Sandra Liebenberg, Socio-Economic Rights: Adjudication under a Transformative Constitution (Juta, 2010). David Landau and Rosalind Dixon, Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy (Oxford University Press, 2021) provides an important critical perspective on the transplantation of constitutional doctrines from one context to another.

On the platform economy and gig work, the most important recent sources are the UK Supreme Court's decision in Uber BV v. Aslam (2021) UKSC 5; the EU Platform Work Directive (2024); Jeremias Adams-Prassl, Humans as a Service: The Promise and Perils of Work in the Gig Economy (Oxford University Press, 2018); Valerio De Stefano, The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork, and Labour Protection in the Gig Economy (ILO, 2016); and the extensive analysis published by the ILO's Future of Work Research Unit on the implications of platform work for labour regulation.

On the history of minimum wages in Bengal and Bangladesh, the foundational historical scholarship includes Dipesh Chakrabarty, Rethinking Working-Class History: Bengal 1890 to 1940 (Princeton University Press, 1989); Rajnarayan Chandavarkar, The Origins of Industrial

Capitalism in India: Business Strategies and the Working Classes in Bombay, 1900 to 1940 (Cambridge University Press, 1994); and Nandini Gooptu, The Politics of the Urban Poor in Early Twentieth-Century India (Cambridge University Press, 2001). For the specific history of the Bangladesh garment sector, the essential sources include the work of Gary Gereffi and others on global value chains; Rivoli, The Travels of a T-Shirt in the Global Economy (John Wiley, 2005); and the extensive documentation produced by the Worker Rights Consortium, the Clean Clothes Campaign, and Human Rights Watch on the conditions of garment workers in Bangladesh.

*End of Part Three*

*Part Four will examine the law of freedom of association and collective bargaining in Bangladesh, including the troubled history of trade union rights under successive Bangladeshi governments, the legal framework of the Bangladesh Labour Act for trade union registration, recognition and collective bargaining, the role of the Export Processing Zones and their distinctive labour regime, the impact of the July 2024 political transition on trade union rights, and the jurisprudential and philosophical foundations of collective labour rights in the context of a developing economy.*

*The question of wages, addressed in this Part, and the question of collective labour rights, to be addressed in Part Four, are ultimately inseparable. The history of minimum wage-setting in Bangladesh demonstrates conclusively that effective wage standards cannot be achieved through administrative regulation alone; they require the countervailing power of a free and democratic trade union movement, capable of bargaining on behalf of workers and of holding both employers and the state accountable for their obligations under the law. The analysis of collective labour rights in Part Four will therefore build directly on the analysis of minimum wages in Part Three, exploring the institutional and legal conditions under which workers can exercise the collective power necessary to secure the wages and conditions that their dignity requires.*

## PART FOUR: FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING, AND THE POLITICAL ECONOMY OF INDUSTRIAL RELATIONS IN BANGLADESH

## PREFATORY NOTE TO PART FOUR

The analysis of minimum wages in Part Three demonstrated, with uncomfortable clarity, that the legal project of securing adequate wages for Bangladeshi workers cannot be understood in isolation from the question of power. Wages are not merely a legal category; they are a relationship of social force. The minimum wage is, at its core, what the law declares when workers cannot extract through collective action what their labour deserves. Where workers have genuine collective power, backed by secure legal rights, wages tend to rise toward something approaching adequacy. Where workers lack such power, minimum wage legislation becomes a ceiling rather than a floor, a bureaucratic substitute for the bargaining strength that workers are denied. The history of minimum wages in Bangladesh is, in the deepest sense, a history of the suppression of collective labour rights.

Part Four turns, therefore, to the foundational question of collective labour rights: the right of workers to associate freely, to organize into trade unions, to bargain collectively with their employers, and to take collective action, including the withholding of labour through strike, in pursuit of their interests. These rights are not merely instrumental; they are constitutive of the worker as a political subject rather than a mere economic input. They represent the legal recognition of the most fundamental truth of labour relations: that the individual worker, standing alone before the employer, is not a free contracting party but a dependent and dominated subject, and that only through collective organization can anything approaching genuine freedom and equality be achieved.

The story of these rights in Bangladesh is one of the most instructive and, in many respects, most troubling chapters in the country's legal and political history. It is a story of repeated suppression, of legal frameworks designed to simulate rather than deliver collective rights, of the systematic use of state power to protect capital at the expense of labour, and of the remarkable resilience of workers and their organizations in the face of these obstacles. It is also, most recently, a story of the most significant reform moment in Bangladesh's labour history, the extraordinary political transformation of July 2024, which created new possibilities for the genuine realization of collective labour rights even as it left profound questions about the depth and durability of that transformation.

This Part proceeds through eight chapters. Chapter Twenty-Two examines the philosophical and jurisprudential foundations of freedom of association and collective bargaining, situating these rights within the broader traditions of political philosophy, constitutional theory, and international human rights law. Chapter Twenty-Three traces the historical development of trade unionism in the Bengal delta, through the colonial period, the Pakistan era, and the successive phases of Bangladeshi political life, identifying the structural patterns of suppression and resistance that have characterized this history. Chapter Twenty-Four provides a detailed technical and critical analysis of the legal framework for trade union registration and recognition under the Bangladesh Labour Act, 2006, including the profound changes introduced by the Bangladesh Labour (Amendment) Ordinance, 2025 and the Bangladesh Labour (Amendment) Bill, 2026. Chapter Twenty-Five examines the law and practice of collective bargaining, analyzing the gap between legal provision and workplace reality. Chapter Twenty-Six addresses the distinctive and deeply problematic labour regime of the Export Processing Zones, including the unique institution of the Workers' Welfare Association and its relationship to the international human rights framework. Chapter Twenty-Seven examines the impact of the July 2024 political transition on industrial relations and trade union rights, assessing both the genuine achievements and the remaining deficits of the reform process initiated by the interim government of Chief Adviser Muhammad Yunus. Chapter Twenty-Eight analyzes the law of industrial disputes, strikes, and collective action, including the persistent restrictions on the right to strike that have characterized Bangladeshi labour law across its history. Chapter Twenty-Nine proposes a comprehensive reform agenda grounded in the philosophical and jurisprudential analysis of the preceding chapters, offering a blueprint for a genuinely rights-based framework of collective labour rights in Bangladesh.

The central argument of this Part is that the formal legal recognition of freedom of association and collective bargaining in Bangladesh has consistently been structured in ways that deny

workers the substantive capacity to exercise these rights effectively. The law has served as a mechanism of legitimation, providing the appearance of collective rights while their substance has been systematically undermined by administrative obstruction, political interference, employer repression, and legal restrictions on the scope and effectiveness of collective action. The reform moment of 2024-2026 represents the most serious attempt yet to address these structural deficits, but genuine transformation requires not merely legal amendment but a fundamental shift in the political economy of industrial relations, including a reconception of the role of the state as a genuine guarantor of worker rights rather than a guardian of investor confidence.

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## CHAPTER TWENTY-TWO: THE PHILOSOPHY AND JURISPRUDENCE OF FREEDOM OF ASSOCIATION

### 22.1 The Foundational Importance of Collective Rights in Labour Law Theory

The recognition that individual workers cannot effectively protect their interests through individual action alone is one of the oldest and most persistent insights of labour law scholarship. It is the insight that drove the emergence of trade unionism in the industrial revolution, that animated the great legal battles over the right to strike in nineteenth-century Britain and America, and that underlies the ILO's designation of freedom of association as a fundamental right. Yet this insight, though widely acknowledged, has been far from universally translated into effective legal protection. Understanding why requires attention to the deep philosophical tensions that freedom of association as a legal category embodies.

The right to organize collectively for the purposes of employment relations sits at the intersection of several distinct philosophical traditions, each of which generates somewhat different justifications and somewhat different implications for the specific legal architecture through which the right should be institutionalized. The contractarian tradition, the republican tradition, the Marxist tradition, the human rights tradition, and the democratic theory tradition each illuminate different aspects of the collective labour rights question, and each has generated significant scholarship in the period between 2024 and 2026 that is directly relevant to the Bangladeshi context.

### 22.2 The Contractarian Justification: Correcting Market Failure

The most modest and, in liberal political economy, the most widely accepted justification for collective bargaining rights is rooted in the analysis of market failure. The starting point is the observation, elaborated extensively by economists from Adam Smith onward, that the labour market is characterized by a structural imbalance of bargaining power between workers and employers. This imbalance has multiple sources: the worker's immediate need for income relative to the employer's greater ability to wait; the employer's typically greater information about market conditions and the value of the worker's labour; the employer's organizational capacity versus the individual worker's isolation; and the monopsonistic tendencies of labour

markets, particularly in geographically concentrated industries like garments in Bangladesh, where workers have limited alternative employment options.

In the face of this structural imbalance, the contractarian argument for collective bargaining holds that allowing workers to bargain collectively is a mechanism for correcting a market imperfection, bringing the parties closer to the bargaining equilibrium that would prevail under genuinely competitive conditions. This is a fundamentally conservative justification: it accepts the basic framework of the labour market and seeks only to make it function more efficiently by addressing a specific deficiency. It does not challenge the fundamental structure of wage labour or the authority of the employer within the enterprise.

The contractarian justification has been developed with particular sophistication in the economic analysis of labour law, including recent work by Simon Deakin and Frank Wilkinson, who have argued that collective bargaining generates positive externalities beyond the parties to the collective agreement, including macroeconomic benefits from wage compression and aggregate demand stabilization. The most recent formulation of this argument, drawing on the post-pandemic reassessment of labour market institutions, emphasizes that collective bargaining is not merely a corrective for individual market failure but a component of a broader institutional architecture for macroeconomic governance, essential to the maintenance of the wage share of national income and the prevention of the kind of downward wage pressure that depresses aggregate demand and generates economic instability.

For Bangladesh, the contractarian justification points toward a clear policy conclusion: in a labour market as heavily imbalanced as Bangladesh's, with hundreds of thousands of garment workers competing for employment with a relatively small number of major factory owners who in turn supply international brands with enormous buyer power, the conditions for genuine individual bargaining are almost entirely absent. The structural imbalance of the Bangladesh labour market is not marginal or correctable at the margins; it is fundamental. Collective bargaining is not merely desirable in these conditions; it is the minimum condition for anything approaching an equitable employment relationship.

### 22.3 The Republican Justification: Domination and Non-Domination

The republican philosophical tradition, which has been developed in the context of labour law most extensively by Alan Bogg, Virginia Mantouvalou, and their collaborators in the Oxford labour law tradition, offers a more fundamental and more challenging justification for freedom of association. On the republican account, the central wrong that freedom of association addresses is not inefficient market outcomes but domination: the subjection of the worker to the arbitrary will of the employer.

Philip Pettit, whose neo-republican political philosophy has been enormously influential in political theory since the 1990s, argues that freedom, properly understood, consists not merely in the absence of actual interference but in the absence of vulnerability to arbitrary interference. A person who is subject to the power of another, who can be harmed, dismissed, disciplined, or degraded at the discretion of that other, is not free in the republican sense even if the other happens, benevolently, to refrain from exercising that power. The garment worker in Ashulia

who can be dismissed without cause, relocated, downgraded, or subjected to verbal abuse at the employer's discretion is not free in the relevant sense, regardless of whether the employer actually exercises these powers on any given day. The worker's dependence on the employer's good will constitutes domination.

Collective organization addresses domination in a distinctive way: not by eliminating the employer's power over the individual worker, but by creating a countervailing power that constrains the employer's discretion and makes the exercise of arbitrary authority more costly. A unionized workplace in which workers can collectively grieve arbitrary dismissals, in which collective agreements specify the conditions under which discipline can be imposed, and in which management decisions can be challenged through formal procedures, is one in which the employer's power has been constitutively transformed from arbitrary authority to bounded authority. The workers are no longer merely dependent on the employer's good will; they have legal and contractual entitlements that they can enforce through collective action.

Bogg's recent work, particularly his 2024 contribution to the Philosophical Foundations series published by Oxford University Press, extends this analysis to the specific question of what freedom of association requires as a matter of republican justice. He argues that genuine non-domination requires not merely the formal right to form and join unions but the effective capacity to exercise that right without fear of retaliation, the legal backing of the state in enforcing collective agreements, and access to collective action including the strike as a means of enforcing the collective power that the union represents. These requirements have direct implications for the assessment of Bangladesh's collective labour rights framework, and they will be developed in the chapters that follow.

The republican analysis also illuminates a dimension of the collective labour rights question that is often underemphasized: the republican concern is not merely with the worker's economic interests but with the worker's status as a citizen, a person capable of participating in the governance of the conditions of his or her own life. This insight connects freedom of association to the democratic theory of labour rights, which holds that the workplace is itself a site of governance, and that workers, as the subjects of this governance, have a democratic right to participate in it. The implications of this claim for the structure of collective bargaining law will be explored below.

## 22.4 The Human Rights Justification: Freedom of Association as a Fundamental Right

The reconceptualization of freedom of association as a fundamental human right, rather than merely a feature of industrial relations law, has been one of the most significant developments in international labour law scholarship and jurisprudence of the past three decades. This reconceptualization draws on the convergence of three intellectual and institutional developments: the elaboration of international human rights law since 1948, the ILO's articulation of core labour standards as fundamental rights, and the theoretical work of philosophers who have argued that workers' collective rights are genuine human rights grounded in the dignity and autonomy of all persons.

The international human rights framework for freedom of association has its foundational expression in Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of association, including the right to form and join trade unions; and Articles 7 and 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantee just and favourable conditions of work and the right to form and join trade unions. Bangladesh is a party to both covenants, creating binding obligations under international law.

The ILO's elaboration of freedom of association as a fundamental right is expressed most directly in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98). These two conventions are among the ILO's ten core (fundamental) conventions, and Bangladesh ratified both, creating binding international law obligations that are directly relevant to the assessment of domestic legislation. The Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) have both generated extensive jurisprudence on the content of these obligations, and their conclusions regarding Bangladesh specifically will be examined in detail in subsequent chapters.

The theoretical case for treating freedom of association as a fundamental human right, rather than merely a useful industrial relations institution, has been made most persuasively by Virginia Mantouvalou in her 2012 article in the Modern Law Review and developed in subsequent work. Mantouvalou argues that the right to organize collectively is grounded in three fundamental human values: the equal dignity of all persons, the importance of autonomy and self-determination, and the value of democratic participation. Workers who are denied the right to organize are denied recognition as full persons capable of self-governance; they are treated as instruments of production rather than as ends in themselves. This is not merely an economic injustice; it is a denial of the worker's humanity.

This philosophical argument has been reinforced by recent developments in comparative constitutional jurisprudence. The Supreme Court of Canada's landmark decision in Health Services and Support (2007) recognized freedom of association in the employment context as a constitutionally protected right under the Canadian Charter of Rights and Freedoms, explicitly grounding this recognition in the history of collective labour rights and the values of human dignity and democracy. The decision was criticized by some as going too far and was partially qualified in subsequent cases, but it represented a decisive break from the older view that constitutional freedom of association guarantees extended only to the right to form and join organizations and not to the right to collective bargaining. The 2015 decision in Saskatchewan Federation of Labour extended this constitutional protection explicitly to the right to strike, holding that the right to strike is a necessary component of a meaningful freedom of association in the employment context.

These developments in comparative constitutional jurisprudence are relevant to Bangladesh not merely as persuasive authority but as models for the constitutional reform agenda that this textbook advocates. The recognition of freedom of association, collective bargaining, and the

right to strike as constitutional rights, enforceable through the courts, would represent a fundamental transformation of the legal landscape for workers in Bangladesh.

## 22.5 The Democratic Theory of Collective Labour Rights

The democratic theory justification for freedom of association holds that collective labour rights are required not merely by the interests of workers but by the logic of democratic governance itself. This argument, developed most systematically by the American legal theorist Cynthia Estlund in her book Regoverning the Workplace (Yale University Press, 2010) and extended in her subsequent work, holds that the employment relationship constitutes a form of private governance, in which employers exercise significant authority over a major domain of workers' lives, and that the democratic principle requires that those who are subject to governance have a voice in the conditions of that governance.

The democratic theory argument goes beyond the republican concern with domination to make a more positive claim: collective bargaining is not merely a mechanism for limiting arbitrary employer power but a form of workplace democracy, through which workers participate as citizens in the governance of the conditions of their working lives. This positive claim has implications not merely for the right to bargain collectively but for the structure of collective bargaining law: if collective bargaining is a form of democratic participation, then laws that constrain the effectiveness of collective bargaining, by limiting the subjects of bargaining, restricting the right to strike, or allowing employers to circumvent union recognition, are not merely unfair but are antidemocratic.

The democratic theory of collective labour rights also connects to the broader question of economic democracy and corporate governance, a question that has gained increasing prominence in international labour law scholarship in the period since 2020. The argument that workers should have representation rights not merely in collective bargaining but in corporate governance, including representation on boards of directors, as in the German model of Mitbestimmung, draws directly on the democratic theory. While such extensive participation rights are far beyond the current horizon of Bangladesh's labour law reform agenda, the democratic theory argument provides a philosophical foundation for understanding why the existing framework, which excludes workers almost entirely from participation in enterprise decision-making, falls fundamentally short of what justice requires.

## 22.6 The Marxist and Critical Perspectives: Collective Rights as Both Achievement and Limitation

The Marxist and critical legal traditions offer a more ambivalent assessment of collective labour rights, one that is essential to any honest and complete philosophical account of freedom of association. From a Marxist perspective, the legal recognition of trade unions and collective bargaining is simultaneously an achievement of the working class in its struggle against capital, and a mechanism through which capitalism manages and incorporates that struggle, preventing it from developing into a fundamental challenge to the wage-labour relation itself.

This ambivalence was captured most memorably by the Italian Marxist Antonio Gramsci, who argued that bourgeois hegemony operates not primarily through coercion but through consent, by incorporating working-class institutions, including trade unions and collective bargaining, into the existing social order in a way that stabilizes rather than challenges capitalist relations of production. Trade unions, on the Gramscian account, are both expressions of working-class power and instruments of its normalization: they channel workers' energy into legally sanctioned forms of dispute resolution that accept the fundamental framework of commodity production and wage labour.

The implications of this analysis for the assessment of Bangladesh's collective labour rights framework are complex. On one hand, the Gramscian perspective would suggest that the legal recognition of trade unions and collective bargaining, even in the restricted forms provided by the Bangladesh Labour Act, represents a genuine, if partial, concession to working-class power, one that should not be dismissed as mere window-dressing. On the other hand, it would suggest that the framework has been designed, consciously or not, to contain and channel working-class organization rather than to enable it to develop its full potential as a force for social transformation.

The critical legal scholarship on collective labour rights, including recent contributions by Zoe Adams and others in the Critical Labour Law tradition, has developed this analysis in new directions. Adams's 2023 book Labour and the Law: Against the Grain argues that the legal framework of collective bargaining in Britain has been structured throughout its history to maintain capital's structural advantage over labour, by restricting the scope of bargaining, limiting the right to strike, and imposing procedural requirements that make collective action difficult and costly. While Adams's analysis is focused on British law, the structural parallels with Bangladesh are striking, and the analytical framework she deploys has obvious relevance to the Bangladeshi context.

The most recent critical scholarship, drawing on developments in 2024-2025, has also emphasized the way in which new technologies and new forms of work organization are being used to undermine collective labour rights even as those rights are formally strengthened. The rise of platform work, the use of algorithmic management, and the fragmentation of the workforce through outsourcing and subcontracting all create conditions in which the formal right to organize is rendered practically ineffective by the structural transformation of the workforce. In Bangladesh, these developments are visible primarily in the garment sector, where the increasing use of short-term contracts, casual labour, and informal subcontracting has fragmented the workforce in ways that make traditional trade union organization difficult. The reform agenda proposed in Chapter Twenty-Nine must grapple with these structural changes, not merely with the formal legal framework.

## 22.7 Jurisprudential Synthesis: Toward a Rights-Based Framework for Collective Labour Law

The various philosophical traditions examined in the preceding sections each contribute important insights to the jurisprudential analysis of collective labour rights, even as they disagree about fundamental questions of justification and priority. The contractarian tradition emphasizes

market correction and economic efficiency; the republican tradition emphasizes non-domination and citizen status; the human rights tradition grounds collective rights in dignity and autonomy; the democratic theory grounds them in citizenship and self-governance; and the critical tradition insists on the structural constraints within which legal rights operate. A jurisprudentially adequate framework for collective labour rights in Bangladesh must take all of these insights seriously.

The synthesis that this textbook proposes is organized around three core principles. First, freedom of association in the employment context is a fundamental right grounded in the equal dignity and democratic standing of all persons; it is not merely a useful industrial relations institution but a constitutive requirement of a just social order. Second, the legal recognition of freedom of association must be assessed not merely by the formal provisions of the law but by the extent to which those provisions enable workers to exercise collective rights effectively; formal rights that are systematically undermined by administrative obstruction, employer repression, or structural barriers do not satisfy the requirements of the right. Third, the reform of collective labour law must attend not only to the specific provisions of trade union law but to the broader institutional and political economy context within which those provisions operate, including the role of the state, the structure of labour markets, and the power relations that shape the practical meaning of legal rights.

These principles will provide the normative framework for the detailed analysis of Bangladeshi collective labour law that follows.

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## CHAPTER TWENTY-THREE: THE HISTORICAL DEVELOPMENT OF TRADE UNIONISM IN BENGAL AND BANGLADESH

### 23.1 The Emergence of Labour Organization in Colonial Bengal

The history of organized labour in the Bengal delta begins not with the formal establishment of trade unions but with the spontaneous collective actions of workers responding to the conditions of early industrial capitalism. The jute mills of the Calcutta region, the cotton mills, the railway workshops, and the nascent garment establishments of late nineteenth and early twentieth century Bengal were sites of intense labour unrest long before trade union law existed, as workers responded to the brutal conditions of early industrial employment, including the thirteen to sixteen hour working days, the systematic use of child labour, the arbitrary violence of European and Indian supervisors, and the absence of any legal protections against dismissal or unsafe working conditions.

The first organized labour associations in Bengal emerged in the period between 1890 and 1910, growing out of mutual aid societies, reading rooms, and nationalist political organizations. These early associations were shaped by the particular social formation of colonial Bengal, in which caste identities, regional loyalties, and religious affiliations intersected with emerging class identities in complex ways. The Brahmin clerks of the colonial administration, the Muslim weavers of Dhaka, the Hindu artisans of Calcutta, and the migrant labourers of the jute mills

brought different social experiences and different cultural resources to the project of collective organization.

Dipesh Chakrabarty's magisterial Rethinking Working-Class History: Bengal 1890 to 1940, which remains the foundational scholarly text on this period, demonstrates that the Bengal working class developed a distinctive political consciousness that was shaped both by the emerging discourse of labour rights and by the indigenous cultural traditions of Bengali Muslim and Hindu workers. Chakrabarty's analysis of the "solidarity without organization" that characterized early Bengali labour relations, in which workers developed powerful forms of collective identity and collective action without formal organizational structures, is profoundly illuminating of the particular character of Bangladesh's labour movement and its relationship to formal trade union law.

The Bangla political imagination of this period was shaped by the swadeshi movement and the independence struggle, which provided ideological resources for the critique of colonial exploitation and the assertion of workers' dignity. The connection between the national liberation struggle and the labour movement was complex and often contested: nationalist politicians sometimes supported workers' demands when they served anti-colonial purposes, and just as readily suppressed or co-opted them when they threatened propertied interests. This ambivalent relationship between nationalism and labour, which anticipated the equally complex relationship between the Bangladeshi national movement and workers' rights, is a recurrent theme in the history examined in this chapter.

## 23.2 The Trade Unions Act, 1926, and Its Implications for Bengal

The Trade Unions Act, 1926, which provided the first comprehensive legal framework for trade union registration in British India, was a product of the particular political constellation of the mid-1920s: the growing strength of the independence movement, the increasing militancy of the working class in Bombay and Bengal, the recommendations of the Royal Commission on Labour, and the influence of the International Labour Organisation, newly established in 1919 as part of the post-World War I peace settlement. The Act's passage represented a significant concession to the labour movement, formally legalizing trade unions and extending to them a degree of legal immunity for acts done in furtherance of a trade dispute. But it also served to channel and control labour organization within carefully defined legal limits.

The Act required a minimum of seven workers for union registration, a requirement that seemed permissive but in practice created significant barriers given the colonial state's administrative hostility to labour organization and the social pressures against workers who openly challenged employers. More importantly, the Act contained no provisions requiring employers to recognize registered unions or to bargain in good faith with them. The legal recognition of trade unions was purely formal: unions could exist, but they had no legal right to compel employers to negotiate with them. This fundamental limitation, which reproduced the English common law framework of collective laissez-faire at its most basic level, was to haunt South Asian collective labour law for decades.

In Bengal, the inter-war period saw the development of significant trade union activity, particularly in the jute mills, the cotton textile industry, and the railway workshops. The All India Trade Union Congress (AITUC), founded in 1920, became the dominant federation of the period, though it was subsequently challenged by the Indian National Trade Union Congress (INTUC), which was closely aligned with the Indian National Congress. The Bengal labour movement was characterized by intense competition between communist-aligned unions affiliated to the AITUC and more moderate unions aligned with the Congress, a competition that reflected the broader ideological divisions of the independence movement and that contributed to the fragmentation of organized labour that would characterize trade unionism in the subcontinent for the remainder of the century.

The jute mill workers of Bengal, who formed the largest concentration of industrial workers in the region, were the subject of particular attention from both union organizers and the colonial state. The Bengal jute mills, primarily owned by Scottish and English capital and employing predominantly migrant Muslim workers from Bihar and the United Provinces alongside Bengali Hindu workers, were sites of intense social and political conflict. Strike activity in the mills was met with a combination of selective concessions and repression, including the use of the colonial police and military forces against strikers and the systematic identification and dismissal of union activists. This pattern of selective concession and systematic repression is one that would be reproduced, with depressing regularity, throughout the subsequent history of Bangladeshi industrial relations.

## 23.3 The Pakistan Period: Suppression and Fragmentation of Labour Organization in East Bengal

The partition of British India in August 1947 and the creation of Pakistan as a new state comprising two geographically separated wings created a distinctive context for the development of labour relations in East Bengal, which became East Pakistan. The new Pakistani state inherited the colonial legal framework of labour regulation, including the Trade Unions Act, 1926, and the Industrial Disputes Act, 1947, but it deployed these frameworks in a political context shaped by the particular character of the Pakistani state and by the colonial-within-colonial relationship between East and West Pakistan.

The West Pakistani ruling class, which dominated the Pakistani state from the outset, treated East Bengal primarily as an economic resource to be exploited for the benefit of the Pakistan project broadly conceived, and particularly for the benefit of West Pakistani industrial and commercial interests. The great jute industry of East Bengal, which generated the bulk of Pakistan's foreign exchange earnings in the first decades after independence, was controlled and managed primarily by West Pakistani and Punjabi-Mohajir capitalists, with the profits flowing to Karachi and Lahore rather than to Dhaka. The Bengali workers of the jute mills and emerging garment establishments found themselves exploited by a Pakistani capitalism that was both external and internal to the national project in which they had participated.

In this context, trade unionism in East Pakistan was shaped by the complex interaction of class interests and national identity. Bengali nationalism and labour activism were intertwined in ways that made both more powerful and both more vulnerable to state repression. The Pakistani state,

keenly aware of the subversive potential of a Bengali working class organized around both economic and national grievances, deployed its legal and administrative apparatus aggressively against trade union activity. The Trade Unions Act was amended to impose increasingly stringent requirements for union registration; labour courts were established that operated slowly and in ways systematically favourable to employers; and the police and military were routinely used against strikes and demonstrations.

The experience of trade union suppression in East Pakistan generated a particular political consciousness among Bengali workers, in which the demand for workers' rights was inseparable from the demand for national self-determination. The trade union activists who participated in the language movement of 1952, in the political mobilizations of the 1960s, and ultimately in the liberation war of 1971, brought to the independence struggle a set of social and economic demands that went beyond the formal political goal of a separate Bengali state. The promise of independence, for the workers who fought and died in the liberation war, included the promise of a new social order in which their dignity and rights would be genuinely recognized.

## 23.4 The Early Bangladesh Period: The Promise and Betrayal of Labour Rights

The independence of Bangladesh in December 1971, achieved through a liberation war of extraordinary sacrifice and suffering, created a moment of genuine possibility for the transformation of labour relations. The Awami League government of Sheikh Mujibur Rahman, which came to power with enormous popular legitimacy, inherited a constitutional and political mandate that included strong commitments to social justice and workers' rights. The Constitution of Bangladesh, adopted in 1972, included a set of Fundamental Principles of State Policy that committed the state to ensuring a just and equitable society, to ensuring that no person shall be exploited, and to guaranteeing to workers a just and favourable remuneration, social security, and the opportunity to form trade unions and bargain collectively.

These constitutional commitments were genuine expressions of the political aspirations of the liberation movement, but they were almost immediately tested by the political and economic realities of the post-liberation state. The Bangladesh economy in 1971 was in ruins, devastated by the liberation war and by years of systematic underinvestment under Pakistani rule. The task of reconstruction required massive international assistance and the establishment of functioning state institutions capable of managing a complex economy. In this context, the workers' movement pressed its claims with urgency, and the response of the new state was instructive.

The Sheikh Mujibur Rahman government nationalized the major industries, including the jute mills and cotton textile factories that had formed the core of East Pakistan's industrial economy, creating a large state-owned enterprise sector in which the government was simultaneously regulator, employer, and guarantor of labour rights. This nationalization was welcomed by many in the labour movement as a step toward the socialist transformation promised by the liberation movement's ideological commitments, but it also created a new form of political control over labour relations: the government, as employer, had a direct interest in controlling labour costs and limiting industrial disruption, and it used this interest to restrict trade union activity in the state-owned sector.

The amendment of the Industrial Relations Ordinance, 1969 (which had been inherited from the Pakistan period), and its partial replacement by the Industrial Relations Ordinance, 1975, reflected the government's attempt to manage rather than empower the labour movement. The 1969 ordinance had established the framework of Collective Bargaining Agent (CBA) elections that was to remain the centerpiece of Bangladesh's collective bargaining system, but it had also imposed restrictions on trade union activity that reflected the Pakistani state's suspicion of organized labour. The 1975 ordinance went further in the restrictive direction, imposing new limits on the right to strike and expanding the government's powers of administrative intervention in industrial relations.

The assassination of Sheikh Mujibur Rahman in August 1975 and the subsequent period of military rule under General Ziaur Rahman and General Hussain Muhammad Ershad marked a decisive shift in the political economy of labour relations in Bangladesh. The military governments, responding to pressure from international financial institutions and from the growing importance of the export garment sector, pursued an explicitly export-oriented development strategy that prioritized the maintenance of low wages and industrial discipline over the protection of workers' rights. Trade union rights were systematically curtailed, independent labour organizing was suppressed with increasing ferocity, and the Export Processing Zones were established with an explicit exclusion from trade union law, creating a template for the subordination of workers' rights to investment promotion that would persist for decades.

The garment sector, which began its meteoric rise in the early 1980s and transformed Bangladesh's export economy, emerged in a legal environment of systematic labour suppression. The factories that produced clothing for international brands operated in conditions that included the denial of the right to organize, the systematic use of dismissal and blacklisting against union activists, and the routine cooperation of state security forces with employers against workers who attempted to exercise their legal rights. The notorious practice of "blacklisting" union activists, circulating lists of workers who had participated in union activity to prevent them from finding employment in any garment factory, became one of the most effective tools of anti-union repression, operating outside any formal legal framework and immune from legal challenge. The 2025 amendment's explicit prohibition of blacklisting as an unfair labour practice is, in this context, a recognition of a longstanding abuse of extraordinary severity.

## 23.5 The Garment Sector and the Reproduction of Anti-Union Practices

The growth of the ready-made garment (RMG) sector from the early 1980s to its current position as the cornerstone of Bangladesh's export economy has been accompanied by a consistent pattern of anti-union practice that has been documented extensively by international labour rights organizations, including the International Labour Organization, Human Rights Watch, the Worker Rights Consortium, the Clean Clothes Campaign, and Solidarity Center, among others. Understanding this pattern requires attention to the particular structural features of the garment sector that create both the conditions for and the incentives toward anti-union employment relations.

The garment sector in Bangladesh operates through a global value chain in which Bangladeshi factories are suppliers to international brands and retailers that set the prices, specifications, and

delivery conditions for their orders. This global value chain structure creates a characteristic cost pressure: brands squeeze suppliers on price, suppliers respond by squeezing workers on wages and conditions, and workers are too isolated and too easily replaced to resist effectively without collective organization. The suppression of trade unionism in the garment sector is not, in this analysis, merely a preference of individual employers but a structural consequence of the position of Bangladeshi factories in the global value chain.

The specific mechanisms of anti-union practice in the Bangladesh garment sector have been documented in detail by successive ILO reports, CEACR observations, and independent research. They include: the filing of false criminal charges against union activists and leaders, exploiting Bangladesh's expansive criminal defamation and sedition laws to intimidate potential organizers; the use of industrial police and security forces to disperse demonstrations and arrest workers; the systematic dismissal of workers who participate in organizing activities, combined with blacklisting to prevent them from finding alternative employment; the establishment by employers of "yellow unions" or company-sponsored unions designed to preempt the formation of independent worker organizations; and the administrative obstruction of union registration by the Department of Labour, which historically refused or delayed registration on pretextual grounds.

The Bangladesh Garment Manufacturers and Exporters Association (BGMEA), the powerful industry lobby that represents the interests of garment factory owners, has played a central role in maintaining anti-union practices, both through its direct influence over its member factories and through its political influence over the Department of Labour and successive governments. The BGMEA's political connections, which span the Bangladesh Nationalist Party, the Awami League, and other major political formations, have historically allowed it to resist meaningful reform of collective labour rights while presenting Bangladesh as a compliant partner in international labour standards initiatives.

The Rana Plaza disaster of April 2013, in which the collapse of a multistory garment factory building killed 1,134 workers and injured thousands more, created a moment of international crisis that forced a significant reconsideration of the labour relations framework in Bangladesh. The disaster and its aftermath demonstrated, with devastating clarity, the consequences of a labour relations system in which workers had no effective means of raising safety concerns or compelling employers to address them. Workers had raised alarms about cracks in the Rana Plaza building before its collapse; their concerns were dismissed, and they were ordered to return to work under threat of dismissal. A functioning collective bargaining system, backed by the legal right to refuse unsafe work, might have prevented the disaster.

The post-Rana Plaza reform process, driven by international pressure from brands, governments, and civil society, produced significant changes to the formal legal framework of labour rights in Bangladesh, including the 2013 amendments to the Bangladesh Labour Act that substantially reduced the barriers to union registration and strengthened anti-union discrimination protections. But the deeper structural patterns of the Bangladesh garment sector's industrial relations were more resistant to change: anti-union practices continued, though with greater public scrutiny and somewhat greater legal risk; the Department of Labour's administration of the union registration process remained characterized by significant delays and obstruction; and the structural

dependence of factories on the pricing decisions of international brands continued to drive the cost-cutting and disciplinary practices that made genuine collective bargaining so difficult.

### 23.6 The Awami League Era (2009-2024): Managed Labour Relations and the Limits of Reform

The Awami League governments of Sheikh Hasina, which held power from 2009 through the political upheaval of July 2024, pursued an approach to labour relations that could be characterized as managed reform: formal acknowledgment of the need for improved labour standards, combined with persistent protection of the interests of the garment industry and consistent suppression of genuinely independent labour organizing.

The 2013 and 2018 amendments to the Bangladesh Labour Act, and the associated changes to the Bangladesh Labour Rules, were genuine steps forward in the formal legal framework: they reduced the membership threshold for union registration from thirty percent to twenty percent of the workforce, strengthened anti-union discrimination provisions, extended the scope of the Act to additional categories of workers, and improved the formal provisions for workplace safety. These reforms were, in significant measure, driven by international pressure following the Rana Plaza disaster, and they reflected the Awami League government's calculation that formal compliance with international labour standards was necessary to maintain Bangladesh's access to preferential trade arrangements, particularly the EU's Generalized System of Preferences (GSP), and to maintain the cooperation of international brands and buyers.

But alongside this formal reform process, the Awami League government consistently deployed state power against the independent labour movement. The garment sector wage protests of October 2023, in which tens of thousands of workers took to the streets to demand a living wage, were met with the deployment of police and paramilitary forces, the firing of live ammunition against protesters, and the death of at least several workers. The government's response to the wage protests was to announce a minimum wage increase that fell far short of what workers demanded, and to conduct systematic persecution of trade union and labour rights activists under various provisions of criminal law, including the Digital Security Act, which was used to target activists who publicized conditions in garment factories through social media.

The ILO's Committee of Experts, in its 2024 report, specifically noted its deep concern about the violence against garment workers during the October 2023 wage protests, the prosecution of trade union leaders under criminal law, and the continuing barriers to trade union registration and collective bargaining in practice. The CEACR's observations regarding Bangladesh's compliance with Convention No. 87 (freedom of association) and Convention No. 98 (right to organize and collective bargaining) documented a wide range of specific violations, including the administrative obstruction of union registration, the use of criminal law against trade union leaders, and the pervasive culture of impunity for anti-union discrimination by employers.

This was the context, then, in which the July 2024 political transformation occurred, a transformation of such profound significance for Bangladeshi labour law that it requires detailed examination in its own chapter.

# CHAPTER TWENTY-FOUR: THE LEGAL FRAMEWORK OF TRADE UNION REGISTRATION AND COLLECTIVE BARGAINING UNDER THE BANGLADESH LABOUR ACT

## 24.1 The Architecture of Trade Union Law: An Overview

The Bangladesh Labour Act, 2006 (BLA), as substantially amended by the Bangladesh Labour (Amendment) Act, 2013, the Bangladesh Labour (Amendment) Act, 2018, and most recently the Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Bill, 2026, provides the primary legal framework for trade union registration, recognition, and collective bargaining in Bangladesh. This framework is organized around a set of interlocking institutions and procedures that, taken together, constitute the architecture of collective labour law in Bangladesh.

The framework can be analyzed in terms of five core dimensions: first, the definition of "trade union" and the categories of workers entitled to organize; second, the requirements and procedures for trade union registration; third, the system for determining the Collective Bargaining Agent (CBA); fourth, the substantive provisions of collective bargaining, including the subjects that may be bargained over and the obligations imposed on the parties; and fifth, the provisions addressing unfair labour practices and anti-union discrimination. Each of these dimensions has been subject to significant reform in the 2025-2026 amendment process, and each requires detailed analysis.

## 24.2 Defining the Trade Union: Scope, Membership, and the Expanded Coverage of the 2025 Amendment

Section 2(65) of the BLA defines a "trade union" as any combination of workers, whether temporary or permanent, formed primarily for the purpose of regulating relations between workers and employers, or between workers and workers. This definition, which follows the classic formulation of the British Trade Union Act, 1871, is deliberately broad at the definitional level, encompassing any combination of workers organized for industrial relations purposes, regardless of its formal structure or the specific sector in which it operates.

The 2025 amendment has made significant changes to this definition. Most importantly, it has expanded the categories of persons who may form trade unions to include not only workers in the traditional sense, but also "officers" of establishments, self-employed workers, daily and temporary workers, and gig and platform workers. This expansion represents a fundamental reconceptualization of who belongs within the community of those entitled to collective rights, one that responds to the structural changes in the labour market that have created new forms of work that do not fit neatly into the traditional template of the employment relationship.

The inclusion of gig and platform workers within the scope of trade union rights is a particularly significant development, one that places Bangladesh at the forefront of a global debate about the appropriate legal framework for platform work. As of 2025, very few jurisdictions have

explicitly extended collective labour rights to platform workers in domestic legislation, though several European countries are moving in this direction under the impetus of the EU Platform Work Directive adopted in 2024. The Spanish Supreme Court's 2020 recognition that Glovo delivery workers were employees, and the subsequent extension of collective bargaining rights to them, provided an important precedent. The Bangladesh amendment's explicit inclusion of gig and platform workers represents an important step, though as will be discussed below, the practical challenges of organizing platform workers within the existing trade union framework remain substantial.

The 2025 amendment has also revised the definition of "Collective Bargaining Agent" to include not only trade unions at the enterprise level but also confederations of unions. This change is significant because it opens the possibility of industry-wide or cross-enterprise collective bargaining, which has historically been absent from the Bangladesh framework. In economies where collective bargaining occurs primarily at the enterprise level, wage competition between firms tends to drive wages downward, as individual factory owners argue that they cannot afford to pay more than their competitors. Industry-wide bargaining, by setting a common wage floor across all firms in the sector, eliminates this competitive argument and creates conditions for genuine upward pressure on wages and conditions. The extension of CBA status to confederations is a necessary, though not sufficient, condition for the development of industry-wide bargaining in Bangladesh.

### 24.3 Registration Requirements: The Transformation from Percentage to Absolute Number Thresholds

The most technically detailed and practically significant change introduced by the 2025 amendment concerns the requirements for trade union registration. Under the pre-2025 framework, unions were required to secure the membership of at least twenty percent of the workers in the establishment in which they sought to organize. This percentage threshold, which had been reduced from thirty percent in the 2018 amendment, was widely criticized as an excessively high barrier to organization, particularly in large establishments where organizing a fifth of the workforce before any formal legal protection existed was an enormous and dangerous undertaking.

The 2025 amendment has replaced the percentage threshold with a system of absolute number requirements scaled to the size of the establishment. Under the new framework, established in the amended Section 179, the requirements are as follows: establishments with up to three hundred workers require a minimum of twenty members for union registration; establishments with three hundred one to five hundred workers require forty members; establishments with five hundred one to one thousand five hundred workers require one hundred members; establishments with one thousand five hundred one to three thousand workers require three hundred members; and establishments with more than three thousand workers require four hundred members.

The significance of this change requires careful analysis. On one hand, the shift from percentage to absolute number thresholds represents a genuine liberalization of the registration requirements, particularly for small and medium-sized establishments. In a factory with two hundred workers, the old twenty percent threshold required forty members before a union could

be registered; the new flat twenty-member requirement is a meaningful reduction. For a factory with five hundred workers, the old threshold required one hundred members; the new forty-member requirement is similarly a significant reduction. These changes create genuine new possibilities for organizing in establishments that were previously too small or too hostile to union activity for the percentage threshold to be met.

On the other hand, some labour rights critics have noted that the new scaled thresholds create a regressive structure at the upper end: for a factory with five thousand workers, the old twenty percent threshold would have required one thousand members for registration, while the new maximum threshold requires only four hundred. This means that in the largest factories, the barriers to registration are actually lower under the new system than under the old, at least in absolute terms, though not necessarily in political terms given that organizing in large factories presents its own distinctive challenges.

The more fundamental criticism of the registration threshold system, which applies regardless of whether thresholds are expressed as percentages or absolute numbers, is that any system that requires a minimum number of members to be recruited before any formal legal protection against anti-union discrimination attaches creates a structural vulnerability: the period of organizing before registration is precisely the period when workers are most exposed to employer retaliation, and it is therefore the period when legal protection is most needed. The reformed framework, like its predecessor, provides no protection to workers engaged in organizing activity before the registration threshold is met.

The solution to this problem, adopted in various forms by more protective labour law systems, is the extension of anti-union discrimination protection to organizing activity itself, regardless of whether a formal registration application has been lodged. The National Labor Relations Act in the United States, for example, protects "concerted activities for mutual aid or protection" from the moment they occur, not merely after a union has been formally certified. The Bangladesh framework's restriction of legal protection to the post-registration phase leaves a critical gap that the 2025 amendment has not addressed.

### 24.4 The Registration Process: Administrative Practice and Its Pathologies

The formal requirements for trade union registration, as set out in Sections 179-184 of the BLA, require applicants to submit a registration application to the Director of Labour, accompanied by a copy of the union's constitution, a statement of the names, occupations, and addresses of the executive officers, and a declaration that the application has been signed by the majority of the founding members. The Director of Labour is required to register the union within sixty days if the application is in order, or to communicate the reasons for refusal within the same period.

These formal requirements are, on their face, relatively straightforward. The practical reality of the registration process has been, by consistent documentation, far more obstructed. The ILO's independent assessment of trade union registration and practices, conducted in 2023-2024 and referenced in the government's National Action Plan, found that the registration process was characterized by extended delays, the imposition of requirements not specified in the legislation, requests for documentation that workers found difficult to produce, and a pattern of

administrative behavior that appeared designed to discourage rather than facilitate union registration. The assessment found that the average time for processing a union registration application was significantly longer than the sixty days specified by law, and that many applications were rejected on pretextual grounds that did not withstand legal scrutiny.

The 2025 amendment has introduced several procedural improvements. It requires the Director General to verify registration information through worker lists collected from establishments or through digital and online systems, a provision that is intended to reduce the administrative burden on applicants and to address the problem of employers providing false information about their workforce in order to obstruct union registration. It also strengthens the procedural protections available to unions whose registration is refused, enhancing the right to appeal against administrative decisions.

The development of a digital case management system for trade union registration, which has been announced as part of the ILO-supported reform process, represents a potentially significant improvement in administrative transparency and efficiency. A system in which all registration applications, supporting documents, and administrative decisions are recorded in a publicly accessible database would make it far more difficult for administrators to delay or obstruct registration on pretextual grounds, and would provide union organizers with a clearer record of the administrative process for the purposes of legal challenge.

However, administrative reform alone cannot address the deeper problem, which is the culture of obstruction within the Department of Labour that has been identified by successive assessments as the primary barrier to effective trade union registration. This culture reflects the political economy of the labour administration, in which officials have historically faced pressure from employers and from the political establishment to limit the growth of independent labour organization. Changing this culture requires not merely procedural reform but the development of a genuinely independent labour administration, insulated from political pressure and committed to the enforcement rather than the obstruction of workers' legal rights.

### 24.5 The Collective Bargaining Agent System: Democracy and Its Distortions

The central institutional mechanism through which the BLA seeks to operationalize collective bargaining is the Collective Bargaining Agent (CBA) system, established in Section 202 of the Act. The CBA system is based on the premise that effective collective bargaining requires a single representative agent to bargain on behalf of all workers in an establishment, and that this agent should be chosen through a democratic election among the workers. The system thus combines a majoritarian democratic logic, the legitimacy of the elected representative resting on majority support, with a monopoly representation logic, the elected representative having exclusive bargaining authority, similar to the American model established by the National Labor Relations Act.

Under the pre-2025 framework, any establishment in which more than one trade union existed was required to determine the CBA through a secret ballot election among all workers. The union that won a majority of valid votes cast in the election became the CBA for a period of two years, with exclusive authority to bargain on behalf of all workers in the establishment. During

the two-year period, other registered unions could not seek recognition or initiate collective bargaining.

The 2025 amendment has introduced significant changes to this system. The limit on the number of trade unions that may be formed in a single establishment has been increased from three to five, and the CBA will be elected among them through a voting process. This change has been welcomed by some as creating greater competition and diversity among unions, but it has also generated concern among labour rights scholars and practitioners about the risk of further fragmentation of the labour movement, with multiple competing unions weakening workers' collective power rather than strengthening it.

The CBA system has been the subject of sustained criticism on both theoretical and practical grounds. On the theoretical side, the majoritarian logic of the CBA system assumes that the interests of all workers in an establishment can be adequately represented by a single organization, regardless of the diversity of those workers' interests and the complexity of their situations. Workers with different skill levels, different sectional interests, different national or ethnic identities, and different ideological commitments may not be well-served by a system that forces them to select a single representative whose priorities may not align with their own. The theoretical literature on pluralist collective bargaining, developed most extensively in the British industrial relations tradition by scholars such as Hugh Clegg and Allan Flanders, offers a more nuanced account of the conditions under which multiple unions can coexist and jointly represent workers more effectively than a single union.

On the practical side, the CBA system in Bangladesh has been systematically corrupted by the practices of employer-sponsored "yellow unions" that secure election as the CBA for an establishment specifically in order to prevent genuine collective bargaining. The formation of employer-controlled or employer-funded unions is a recognized feature of anti-union strategy, and the BLA's existing provisions against "employer-controlled" unions and "financial support" for union activities have been consistently inadequate to prevent it. The 2025 amendment's strengthened provisions against these practices, discussed below, represent a significant improvement, but their effectiveness will depend entirely on enforcement.

### 24.6 Unfair Labour Practices and Anti-Union Discrimination: The 2025 and 2026 Reforms

The strengthened provisions against unfair labour practices and anti-union discrimination represent one of the most significant achievements of the 2025-2026 amendment process. The Bangladesh Labour (Amendment) Bill, 2026, as passed by the National Parliament, introduces a comprehensive framework of prohibited conduct that is substantially more protective than the pre-existing provisions.

Under the new framework, employers are explicitly prohibited from: blacklisting workers or trade union members (which has been defined and prohibited for the first time); establishing trade unions under employer control or providing financial or other support to influence trade union activities; encouraging the formation of rival unions; dismissing union leaders in a discriminatory manner; taking retaliatory actions against workers for filing complaints,

participating in legal proceedings, or reporting unfair labour practices; and obstructing the lawful activities of trade unions.

The explicit prohibition on blacklisting represents a particularly significant advance. Blacklisting, the practice of circulating lists of union activists to prevent them from finding employment in any factory in the sector, has been one of the most powerful and pervasive tools of anti-union repression in the Bangladesh garment industry. Its explicit prohibition and classification as an unfair labour practice, with the Director General having authority to order cessation and compensation, creates a new legal remedy for workers who have been subjected to this practice.

The new Section 196(Ka), which defines retaliatory actions against workers seeking investigation of unfair labour practices as anti-union discrimination, is also significant. It creates a specific legal protection for workers who exercise their rights to complain about employer violations, addressing a critical gap in the previous framework that had left workers who raised complaints exposed to retaliation without specific legal remedy.

However, the strengthened provisions against unfair labour practices will be effective only if they are enforced through a system with sufficient resources, independence, and political will to take action against powerful employers. The history of unfair labour practice provisions in Bangladesh's labour law is, unfortunately, a history of formal legal protections that have existed on paper without being effectively enforced. The strengthened provisions must be accompanied by strengthened enforcement mechanisms, including an expanded and adequately resourced labour inspection apparatus, effective remedies that create genuine deterrence, and an independent tribunal system capable of adjudicating unfair labour practice complaints promptly and impartially.

### 24.7 The Subject Matter of Collective Bargaining: Scope, Limits, and the Obligation to Bargain

A critical dimension of collective bargaining law that is often neglected in the commentary on Bangladesh's labour law framework is the question of what the parties may, must, or may not bargain about. The scope of bargaining, defined by law, determines the practical utility of collective bargaining as a mechanism for improving workers' conditions, and a system that formally provides for collective bargaining while restricting its scope to narrow or peripheral matters effectively deprives workers of the practical benefit of the right.

The BLA does not explicitly define the permissible scope of collective bargaining, but its provisions regarding the content of collective agreements and the role of the CBA in settling disputes implicitly define a range of permitted bargaining subjects. In practice, collective agreements in Bangladesh have historically focused on wages, working hours, leave provisions, health and safety measures, and disciplinary procedures. More ambitious bargaining about the structure of work organization, technology deployment, subcontracting decisions, or corporate governance has been entirely absent from the Bangladesh collective bargaining landscape.

The absence of any statutory obligation to bargain in good faith represents a fundamental weakness of the existing framework. Unlike the American system under the National Labor Relations Act, which imposes an obligation on employers to bargain in good faith with certified bargaining agents, the Bangladesh framework creates no such obligation. An employer who refuses to meet with the CBA, who provides false information in negotiations, or who unilaterally changes wages and conditions without consulting the union, violates no specific statutory provision. This absence of a good faith bargaining obligation makes the formal recognition of the CBA largely hollow in practice.

The reform agenda proposed in Chapter Twenty-Nine includes the introduction of a statutory good faith bargaining obligation as a foundational element of a reformed collective bargaining framework. Such an obligation, modelled on the provisions of more protective systems, would require employers to meet with the CBA at reasonable times, to provide relevant information necessary for bargaining, to consider proposals in good faith, and to refrain from unilateral changes to terms and conditions of employment during the bargaining process. The failure to bargain in good faith would be defined as an unfair labour practice, remediable through the labour tribunal system.

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## CHAPTER TWENTY-FIVE: COLLECTIVE BARGAINING IN THEORY AND IN PRACTICE: THE GAP BETWEEN LAW AND REALITY

### 25.1 The Theory of Collective Bargaining and Its Relevance to Bangladesh

Collective bargaining theory, as developed in the industrial relations and labour economics literatures, offers several distinct models of how collective bargaining functions and what outcomes it tends to produce. Understanding these models, and assessing their applicability to the Bangladeshi context, is essential to any realistic evaluation of the prospects for effective collective bargaining reform.

The traditional voluntarist model, associated primarily with the Oxford School of British industrial relations, holds that collective bargaining is most effective when it operates with minimal legal intervention, allowing unions and employers to develop agreements that reflect their specific circumstances and to enforce those agreements through their own industrial muscle. The voluntarist model prizes autonomy: it is suspicious of statutory regulation of bargaining procedures, content, or outcomes, and it regards the state's role as primarily one of removing legal obstacles to bargaining rather than actively prescribing its form or content. This model was most fully realized in British industrial relations in the mid-twentieth century, when collective bargaining coverage was at its peak and statutory regulation was relatively minimal.

The statutory model, exemplified by the American system under the National Labor Relations Act, relies on legislative framework more heavily. It prescribes the procedures for union recognition (through elections), imposes a good faith bargaining obligation on both parties, regulates the scope of mandatory bargaining subjects, and provides administrative enforcement through the National Labor Relations Board. The statutory model provides more legal certainty

and more effective protection for workers seeking to organize, but it also tends toward greater rigidity and can create adversarial legalism that substitutes litigation for genuine industrial relations.

The corporatist model, exemplified by the Nordic countries and Germany, goes furthest in institutionalizing collective bargaining as a mechanism of social governance. In these systems, collective bargaining occurs not merely at the enterprise level but at the sector and national level, with peak-level agreements between employer federations and trade union confederations setting wage norms and conditions across the entire economy. The corporatist model requires strong, disciplined, and representative organizations on both sides of the bargaining relationship, and it has historically been associated with relatively egalitarian wage structures, low levels of industrial conflict, and high levels of labour market flexibility combined with income security.

For Bangladesh, the voluntarist model is clearly inadequate: the deep structural imbalance of power in the Bangladesh labour market means that voluntary bargaining without strong legal backing will systematically favour employers. The statutory model provides useful elements, particularly the good faith bargaining obligation and the enforcement mechanisms, that Bangladesh's framework should incorporate. But the most ambitious and most transformative possibility for Bangladesh is a version of the sectoral bargaining model, in which industry-wide agreements in the garment and other major sectors set wage floors and core conditions across all firms, eliminating the competitive wage-cutting that drives down standards.

The 2025 amendment's extension of CBA status to confederations of unions opens, for the first time, the possibility of moving toward sectoral bargaining. Realizing this possibility requires complementary institutional developments: strong sector-level union federations capable of bargaining across multiple firms, employer associations willing to engage in multi-employer bargaining, and a legal framework that facilitates and enforces sectoral agreements. All of these are long-term developments, but the direction of travel indicated by the 2025 amendment is an important step.

### 25.2 The Collective Agreement in Bangladesh: Form, Content, and Enforceability

The Bangladesh Labour Act provides for collective agreements in Section 205, which specifies that an agreement between an employer and the CBA of a registered establishment shall be in writing and shall be signed by the parties or their authorized representatives. Such agreements shall be binding on the parties and on all workers employed in the establishment during the period of the agreement.

The formal provisions for collective agreements in the BLA are adequate in their basic structure but deficient in several important respects. First, there is no provision for the extension of collective agreements to non-union workers in the same industry or sector, as exists in many European systems. The absence of extension mechanisms means that the benefits of collective bargaining are restricted to unionized establishments, creating a strong incentive for employers to resist unionization in order to avoid being bound by collectively agreed standards.

Second, the duration of collective agreements is limited to two years, matching the two-year term of the CBA. This short duration creates a constant cycle of renegotiation that absorbs significant organizational resources and creates recurring periods of vulnerability. Longer-duration agreements, combined with provisions for periodic wage adjustment, would create greater stability and allow unions to devote more resources to implementation and enforcement rather than perpetual renegotiation.

Third, the mechanisms for enforcing collective agreements, through the Labour Court system, are characterized by the same delays and resource constraints that afflict the labour adjudication system generally. Workers who seek to enforce collective agreement provisions through the Labour Courts face average waiting times that are measured in years rather than months, making individual enforcement a practical impossibility for most workers. The development of more effective mechanisms for the quick and inexpensive enforcement of collective agreements, including the extension of the Labour Inspector's role to include enforcement of collectively agreed terms, is an important element of the reform agenda.

## 25.3 Empirical Evidence on Collective Bargaining Coverage and Outcomes in Bangladesh

The empirical picture of collective bargaining in Bangladesh is bleak. Trade union density, the proportion of workers who are members of trade unions, is estimated at between three and five percent of the formal workforce, with the vast majority of workers, including most garment sector workers, outside any union membership. Collective agreement coverage is similarly low: the number of establishments with registered unions and current collective agreements is a small fraction of the total number of establishments covered by the BLA.

The extreme weakness of collective bargaining coverage is not primarily a reflection of workers' lack of interest in organizing but of the structural and legal barriers that have prevented effective organization. Survey data consistently show that large majorities of garment workers in Bangladesh express support for trade unions and for the improvement of wages and conditions through collective action. The gap between expressed preferences for collective organization and actual union membership reflects the deterrent effect of employer anti-union practices and the inadequacy of legal protections.

The contrast with countries where collective bargaining is more effectively institutionalized is instructive. In Cambodia, which has a similar garment-sector-dominated export economy, collective bargaining coverage in the garment sector is significantly higher than in Bangladesh, in part because of the existence of a more effective labour administration and stronger legal protections against anti-union discrimination. In Indonesia, sectoral minimum wage bargaining through tripartite bodies has created more transparent and more regularly adjusted wage floors, though the system has its own significant problems. In the European Union, the target of eighty percent collective agreement coverage set by the 2022 Minimum Wages Directive reflects the recognition that effective minimum wage setting requires a strong collective bargaining framework, a recognition that has direct implications for the Bangladesh context.

The International Labour Organization's Better Work Bangladesh program, which operates in the garment sector in partnership with brands and factories, has generated valuable empirical data on

industrial relations practices and their relationship to working conditions. The Better Work data consistently shows that factories with functioning labour-management cooperation mechanisms, including joint consultation committees and effective grievance handling, tend to have better compliance with labour standards. This evidence supports the broader theoretical argument that genuine collective participation by workers in the governance of workplace conditions is associated with improved outcomes, not merely for workers but for the efficient and legally compliant operation of the enterprise.

### 25.4 The Wage-Bargaining Nexus: Collective Bargaining and the Living Wage

The connection between collective bargaining and wages, which was signaled in the Prefatory Note to this Part, merits systematic examination. The empirical evidence on the relationship between collective bargaining and wages, drawn from both developed and developing economy contexts, consistently shows that workers covered by collective agreements earn more, on average, than workers in comparable occupations and establishments without collective agreements. This "union wage premium" has been documented across a wide range of contexts and constitutes one of the most robust findings in labour economics.

For Bangladesh, the absence of effective collective bargaining in the garment sector helps explain the persistent gap between the legal minimum wage and any reasonable approximation of a living wage. Where workers have no collective power to press for wages above the legal minimum, the minimum wage tends to become the maximum wage: employers have no incentive to pay more than the minimum, and workers have no effective means of demanding it. The establishment of genuine collective bargaining, with the right to strike as its ultimate sanction, would create pressure for wages above the minimum wage and would complement the living wage reform agenda analyzed in Part Three.

The relationship between collective bargaining and wages is not merely a matter of the union wage premium. It is also a matter of the wage distribution: in economies with strong collective bargaining coverage, wages tend to be more compressed, with smaller gaps between the highest and lowest-paid workers. This compression reflects the egalitarian tendency of collective bargaining institutions, which tend to prioritize percentage increases for lower-paid workers, to set common conditions across different skill levels, and to resist the extreme wage differentials that characterize non-unionized markets. In Bangladesh, where wage inequality has grown significantly alongside economic growth, this egalitarian potential of collective bargaining is particularly relevant.

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## CHAPTER TWENTY-SIX: THE EXPORT PROCESSING ZONES AND THEIR DISTINCTIVE LABOUR REGIME

### 26.1 The Genesis and Political Economy of the EPZ Labour Regime

The Export Processing Zones of Bangladesh, eight of which currently operate under the authority of the Bangladesh Export Processing Zones Authority (BEPZA), represent one of the most

contested and theoretically interesting institutions in Bangladesh's labour law landscape. The EPZs were established beginning in the 1980s as enclaves of foreign investment, exempted from the normal framework of commercial and labour regulation in order to attract multinational corporations seeking cheap, export-oriented manufacturing locations. The theory underlying the EPZ model held that the sacrifice of normal regulatory standards within the zones would be compensated by the economic benefits of investment and employment, and that over time the prosperity generated by EPZ manufacturing would create the conditions for broader improvements in labour standards across the economy.

This theory has been subjected to withering criticism by labour rights scholars, development economists, and international organizations. The most fundamental criticism is that the EPZ model creates a race to the bottom: by exempting EPZ factories from core labour standards, it creates a competitive advantage for those factories based on the denial of rights, and it generates pressure on non-EPZ factories to match the inferior standards of the zones in order to compete for investment. This dynamic does not generate a progressive improvement in standards over time; it generates a downward harmonization of standards toward the lowest common denominator.

The second fundamental criticism is that the EPZ model treats workers' rights as a cost rather than a right, subordinating the fundamental interests of workers to the investment promotion goals of the state. This is not merely an economic criticism but a moral one: the workers employed in the EPZs are human beings entitled to the same fundamental rights as all other workers, and a state that denies them those rights in pursuit of investment cannot claim to be acting justly, regardless of the economic benefits generated.

The specific legal framework for the Bangladesh EPZs has evolved significantly since their establishment. The Bangladesh Export Processing Zones Authority Act, 1980, established the basic legal structure of BEPZA, including its extraordinary powers of regulation and exemption. The EPZ Workers Associations and Industrial Relations Act, 2004, introduced the concept of Workers' Welfare Associations (WWAs) as a substitute for trade unions in the EPZs, but it was widely criticized as providing only a pale shadow of genuine collective rights. The Bangladesh EPZ Labour Act, 2019, which came into force in 2020 and replaced the 2004 Act, introduced more comprehensive labour standards for EPZ workers but retained the fundamental prohibition on trade union affiliation and the restriction of collective rights to the WWA framework.

## 26.2 Workers' Welfare Associations: Genuine Representation or Corporate Control?

The Workers' Welfare Associations (WWAs) established by the EPZ Labour Act represent a distinctive institution that has been the subject of intense debate. BEPZA officials and some international investors have defended the WWA model as a pragmatic adaptation of collective representation to the specific conditions of the EPZs, arguing that the WWAs provide effective representation for workers while maintaining the labour peace necessary for a competitive investment environment. Labour rights organizations, trade union federations, and the ILO have consistently argued that the WWAs fall far short of the requirements of genuine freedom of association as defined by ILO Convention No. 87.

The ILO's Committee on Freedom of Association has, in multiple decisions on complaints relating to the Bangladesh EPZs, found that the restriction of EPZ workers to WWAs rather than trade unions constitutes a violation of Convention No. 87. The CFA's standard is clear: freedom of association requires the right to form and join organizations of one's own choosing, including organizations affiliated to national and international federations. A system that confines workers to enterprise-level associations that cannot affiliate with external organizations, cannot engage in solidarity action with workers in other establishments, and operate under the supervision of the BEPZA authority rather than as genuinely independent worker organizations, does not satisfy this standard.

The specific deficiencies of the WWA framework, as documented by successive ILO assessments and independent research, include: the prohibition on WWA affiliation with trade unions or federations outside the EPZ; the prohibition on linkages with NGOs or political parties; the authority of BEPZA to supervise and, in effect, control the activities of WWAs; the restrictions on the right to strike that go beyond those applicable in the non-EPZ sector; and the absence of any mechanism through which WWAs can negotiate at the sector or industry level.

The practical consequence of these legal restrictions is that EPZ workers are systematically less able to improve their wages and conditions through collective action than workers in the non-EPZ sector, despite the fact that EPZ workers are, by BEPZA's own account, entitled to more extensive basic benefits than non-EPZ workers. The fundamental issue is not the level of basic benefits but the power relationship: workers who are denied genuine freedom of association and collective bargaining are dependent on the employer's and the regulator's good will for any improvement in their conditions, whereas workers with genuine collective rights can exercise independent power.

### 26.3 The BEPZA-ILO Two-Year Action Plan (2025): Reform and Its Limits

The signing of the two-year action plan between BEPZA and the ILO in May 2025, as noted in the Prefatory Note to this Part, represents the most concrete international commitment yet to align the EPZ labour regime with international labour standards. The action plan includes commitments to develop a zero draft amendment to the EPZ Labour Act with ILO technical assistance, to train EPZ inspectors and factory management in better industrial relations practices, to implement Responsible Business Conduct guidelines in EPZ factories, and to develop an Employment Injury Scheme for EPZ workers.

These commitments represent genuine progress, and the involvement of ILO technical assistance in the drafting of EPZ Labour Act amendments provides a real opportunity for the introduction of more genuinely protective provisions. However, the ambition of the action plan is constrained by the fundamental political economy of the EPZ model: BEPZA's institutional mission is to attract and retain investment in the zones, and genuine trade union rights are perceived by many investors as inconsistent with this mission.

The experience of other countries that have attempted to introduce genuine freedom of association in EPZs is instructive. In Sri Lanka, the introduction of trade union rights in EPZs was resisted by EPZ management for years before being partially implemented. In Mauritius,

EPZ workers have had full trade union rights since 2000, with no discernible negative impact on investment. In Cambodia, the Phnom Penh garment sector, which includes both EPZ and non-EPZ factories, has experienced significant union activity with complex effects on investment and conditions. The evidence does not support the claim that genuine freedom of association is necessarily incompatible with maintaining an attractive investment environment; rather, the evidence suggests that the benefits of improved labour relations, including reduced turnover, better productivity, and improved compliance with international buyer standards, can outweigh the costs.

The NAP 2021-2026 review process has identified specific amendments to the EPZ Labour Act that are required to bring it into conformity with international labour standards. These include: removing the prohibition on WWA affiliation with organizations outside the EPZ; allowing the formation of federations of WWAs with genuine bargaining authority; removing the power of BEPZA to dissolve WWAs and prohibit new formation for one year after cancellation; and allowing independent labour inspection of EPZ factories by DIFE without requiring prior BEPZA approval. The BEPZA-ILO action plan's commitment to developing a zero draft incorporating these and other amendments is therefore a critical milestone, and its progress requires close monitoring.

### 26.4 Comparative Analysis: EPZs and Freedom of Association in Global Perspective

The question of whether freedom of association rights should apply in EPZs is not merely a Bangladeshi issue; it is a global debate that has engaged international organizations, trade unions, academics, and governments across the developing world. The comparative evidence from different EPZ regimes provides important lessons for the assessment of Bangladesh's approach.

The ILO's Freedom of Association and Protection of the Right to Organise Convention No. 87, Article 2, provides that workers shall have the right to establish and join organizations of their own choosing without previous authorization. Article 11 of the same convention requires that member states "take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize." These provisions apply to all workers, without any exception for workers in EPZs, and the CFA has consistently held that EPZ exemptions from freedom of association rights violate the convention.

The OECD Guidelines for Multinational Enterprises, updated in 2023, provide that enterprises should respect workers' right to organize and bargain collectively, regardless of where they operate, including in EPZs. The UN Guiding Principles on Business and Human Rights (UNGPs), elaborated by John Ruggie and formally endorsed by the UN Human Rights Council in 2011, impose on business enterprises a responsibility to respect human rights that explicitly includes freedom of association. These international standards create obligations not merely on the Bangladeshi state but on the international brands and investors that operate in or source from Bangladesh's EPZs.

The EU's Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024, requires large companies with significant operations or supply chains in third countries to conduct human

rights due diligence, including with respect to freedom of association. The implementation of the CSDDD creates new legal obligations for European brands sourcing from Bangladesh's EPZs to monitor and address freedom of association violations in their supply chains, creating an additional external driver for reform of the EPZ labour regime.

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## CHAPTER TWENTY-SEVEN: THE JULY 2024 REVOLUTION AND THE NEW LABOUR DISPENSATION

### 27.1 The Political Transformation of July 2024: Context and Character

The extraordinary political events of July and August 2024, which saw the fall of the Awami League government of Sheikh Hasina after fifteen years in power and its replacement by an interim government led by Nobel laureate Muhammad Yunus, represent a moment of political rupture in Bangladesh of the kind that occurs perhaps once in a generation. The mass uprising that precipitated this transformation, initially sparked by student protests against the quota system in public service employment and expanding rapidly into a broad popular rebellion against authoritarian governance, ultimately drew in workers, civil society organizations, and large sections of the population across Bangladesh.

The role of workers in the July uprising has been documented by several labour rights organizations, and it is significant for understanding the political context of the subsequent labour law reform process. Workers from the garment factories, from transport and logistics, and from other sectors of the economy participated in the uprising alongside students and members of the urban middle class. The overthrow of the Hasina government was experienced by many workers as a potential turning point for their rights, a moment when the political conditions for genuine reform might at last exist.

The interim government that came to power in August 2024, led by Chief Adviser Muhammad Yunus, was committed from the outset to a reform agenda that included significant improvements in labour rights. The formation of the Labour Reform Commission by government notification of November 17, 2024, represented the institutionalization of this commitment. The commission was tasked with formulating necessary reform proposals to protect labour rights and to create what the government described as "a rights-based development framework for working people in a new Bangladesh."

The commission included representatives of trade unions, employers, civil society organizations, and academic experts in labour law. Its work over the subsequent months reflected genuine deliberation and consultation with a wide range of stakeholders, in contrast to the more opaque and politically managed processes that had characterized earlier amendment exercises. In April 2025, the commission submitted its detailed report to the government under the title "The Transformation Framework of the World of Work: Workers' Rights, Harmonized Industrial Relations and Inclusive Development."

### 27.2 The Labour Reform Commission's Report: Analysis and Assessment

The Labour Reform Commission's report represents the most comprehensive and ambitious official assessment of Bangladesh's labour law framework since the enactment of the BLA in 2006. Its recommendations addressed virtually every dimension of the collective labour rights framework, including trade union registration, collective bargaining, the EPZ regime, dispute resolution, and enforcement. The report drew on extensive comparative analysis of labour law systems in other countries, on the ILO's supervisory body observations regarding Bangladesh, and on testimony and evidence gathered from workers, employers, and other stakeholders across the country.

The commission's core recommendations on collective labour rights included: the replacement of the percentage membership threshold with the scaled absolute number system subsequently adopted in the 2025 amendment; the extension of freedom of association rights to all workers, including EPZ workers, domestic workers, agricultural workers, and gig workers; the introduction of stronger anti-union discrimination protections, including the explicit prohibition of blacklisting; the reform of the CBA election system to reduce the possibilities for employer manipulation; the development of a framework for sectoral or industry-level bargaining; and the reform of the dispute resolution system to create faster and more accessible remedies for workers.

The commission's report was notable for its engagement with the jurisprudential and philosophical dimensions of the reform agenda. Drawing on the republican framework's concern with domination, the human rights framework's grounding of collective rights in dignity, and the democratic theory's argument for worker participation in enterprise governance, the commission articulated a vision of collective labour rights reform that went beyond technical legal amendment to a reconceptualization of the role of workers in Bangladesh's economic and political life.

The report's acknowledgment of the specific conditions of women workers, who constitute the majority of the garment sector workforce and face distinctive forms of vulnerability including sexual harassment, gender-based discrimination, and the burden of unpaid care work, was particularly welcome. The commission recommended the development of specific provisions for gender-sensitive collective bargaining, including bargaining over workplace harassment policies, maternity and childcare provisions, and pay equity, that recognized the distinctive interests and vulnerabilities of women workers.

### 27.3 The November 2025 Ordinance and the 2026 Amendment Bill: Legislative Analysis

The Bangladesh Labour (Amendment) Ordinance, 2025, approved by the Advisory Council on November 17, 2025, and subsequently enacted as law through the Bangladesh Labour (Amendment) Bill, 2026 passed by the National Parliament in April 2026, represents the most significant legislative reform of Bangladesh's collective labour rights framework since the enactment of the BLA. The analysis of its specific provisions relating to trade unions and collective bargaining has been undertaken in preceding chapters; this section addresses the broader legislative context and political dynamics surrounding the reform.

The amendment was the product of more than a year of consultation under the framework of the National Tripartite Consultative Council (NTCC), reconstituted in December 2024 to include more balanced and representative membership from workers and employers. The NTCC's deliberative process included four sessions of a high-level tripartite conference on social dialogue and labour reform, and extensive technical inputs from the ILO and other international partners. The tripartite Joint Declaration signed on December 1, 2024, between the Ministry of Labour and Employment, the National Coordination Committee for Workers' Education (NCCWE), and the Bangladesh Employers' Federation (BEF), committed all three parties to a framework of improved industrial relations and strengthened legal protections.

The amendment as enacted addresses 125 sections of the BLA, a scope of amendment unprecedented in the history of the Act. The provisions relating to collective labour rights, examined in detail in preceding chapters, are complemented by reforms to the dispute resolution system, including the creation of a new Alternative Dispute Resolution Authority with a retired district judge or experienced professional as chairperson, and a panel of conciliators and arbitrators to manage both individual and collective labour disputes. This new ADR mechanism is intended to address the chronic backlog in the Labour Court system and to provide faster and less costly resolution of disputes, though its effectiveness will depend on the quality of its membership and the adequacy of its resources.

The signing of the tripartite Joint Declaration, which committed the parties to "overhauling the alternative dispute resolution framework and establishing well-resourced, capacitated mechanisms for conciliation and arbitration," represented an important political foundation for the legislative reform process. But the sustainability of this commitment in the face of changes in the political landscape remains uncertain, and the institutional anchoring of the reform process in the law and in independent institutions is therefore critically important.

### 27.4 Remaining Deficits: What the 2025-2026 Reform Has Not Achieved

While the 2025-2026 reform process represents a genuine and significant advance in Bangladesh's collective labour rights framework, an honest assessment requires attention to the significant gaps and limitations that remain. Labour rights organizations, trade union federations, and academic commentators have identified several areas in which the reform has fallen short of what the commission recommended or what international standards require.

First, the EPZ regime remains unreformed in its fundamental character. While the BEPZA-ILO action plan commits to a reform process, no legislative amendment to the EPZ Labour Act has yet been enacted, and EPZ workers remain outside the framework of the reformed BLA. The prohibition on trade union affiliation and the restriction of collective rights to the WWA framework, identified by the ILO's CFA as violations of Convention No. 87, persist.

Second, the agricultural workforce, despite the formal extension of some BLA provisions to agricultural workers through the 2025 amendment, remains largely outside the effective coverage of collective labour law. Agricultural workers in Bangladesh number in the tens of millions, and their exclusion from meaningful collective rights represents a fundamental gap in the framework's coverage.

Third, the enforcement apparatus remains critically underresourced. The Department of Labour's inspection and enforcement capacity, though subject to ongoing improvement through the DIFE-ILO collaboration, is insufficient to monitor and enforce compliance across the hundreds of thousands of establishments covered by the BLA. Without a dramatic expansion of inspection capacity and a fundamental reform of the political culture of the labour administration, the new legal provisions will remain largely unenforced.

Fourth, the reform process has not addressed the structural problem of the global value chain and its role in suppressing wages and labour rights in the garment sector. The legally strengthened framework for collective bargaining in Bangladesh will not deliver significantly improved outcomes if international brands continue to set prices that make it impossible for factories to pay living wages and respect labour rights simultaneously. Supply chain accountability legislation, as analyzed in Part Three, is a necessary complement to domestic labour law reform.

Fifth, and perhaps most fundamentally, the reform process has not generated a legal obligation to bargain in good faith, leaving the CBA system without the substantive enforcement mechanism that would give it practical meaning. The absence of a good faith bargaining obligation means that employers can formally acknowledge the CBA's existence while refusing to engage in genuine negotiation, and workers have no effective legal remedy against this evasion.

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## CHAPTER TWENTY-EIGHT: THE LAW OF INDUSTRIAL DISPUTES, STRIKES, AND COLLECTIVE ACTION

### 28.1 The Nature and Legal Status of the Strike

The strike, the collective withholding of labour by workers in pursuit of their demands, is the ultimate weapon of workers in the contest of industrial relations. Without the right to strike, collective bargaining is reduced to collective begging: workers can present their demands, but they have no effective means of enforcing them if the employer refuses. The right to strike is therefore not merely one element of the freedom of association framework; it is the element that gives all other elements their practical meaning.

The philosophical justification for the right to strike follows directly from the republican and democratic theory analyses examined in Chapter Twenty-Two. If workers are to be genuinely non-dominated, they must have the capacity to withdraw their labour in response to arbitrary employer conduct; the credible threat of strike action is the primary mechanism through which the employer's power over individual workers is constrained. If collective bargaining is to be a genuine form of democratic participation in workplace governance, workers must have access to the ultimate sanction of work stoppage when negotiations fail; without this sanction, the employer has little incentive to make genuine concessions.

The Canadian Supreme Court's decision in Saskatchewan Federation of Labour v. Saskatchewan (2015) is the most authoritative judicial affirmation of the right to strike as a constitutional right, specifically grounded in the guarantee of freedom of association. Justice Abella, writing for the

majority, held that "the right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right." This formulation captures the essential relationship: the right to strike is not an incidental feature of the freedom of association framework but one of its constitutive elements.

The ILO's position on the right to strike, expressed through the jurisprudence of the Committee on Freedom of Association and the Committee of Experts, is that the right to strike is implied by Convention No. 87, even though the convention does not explicitly mention it. The CFA has held that restrictions on the right to strike must be limited to essential services in the strict sense of the term, that is, services whose interruption would endanger the life, personal safety, or health of the whole or part of the population, and that any broader restrictions constitute a violation of the convention.

## 28.2 The Legal Framework for Strikes in Bangladesh: A Critical Analysis

The BLA provides for the right to strike in Chapter XIV, which governs industrial disputes and their resolution. Section 211 of the Act provides that no strike or lockout shall be commenced or declared in connection with any industrial dispute unless: the party intending to commence the strike or lockout has given to the other party and to the Conciliator a notice of the intention to do so within the preceding fourteen days; the strike or lockout is commenced after the expiry of the fourteen-day notice period; the dispute has not been referred to a Labour Court for adjudication; and the dispute has not been submitted to arbitration.

These procedural requirements for a lawful strike are themselves significant barriers. The fourteen-day notice requirement, combined with the obligation to notify both the employer and the Conciliator, creates a period during which the employer can take defensive measures against the strike, including stockpiling inventory, arranging alternative supply, or taking action against the organizers of the strike. The requirement that the dispute not have been referred to a Labour Court means that an employer who proactively refers a dispute to the court can prevent a lawful strike while the litigation proceeds, a process that may take years.

Beyond these procedural barriers, the BLA imposes substantive restrictions on the subjects that can lawfully support a strike. Section 211(5) prohibits strikes in connection with disputes that have been referred to a Labour Court or submitted to arbitration. Section 217 makes it unlawful for any person to take part in a strike declared or commenced in contravention of any provision of the Act or a standing order applicable to the establishment. The penalty for participation in an unlawful strike includes dismissal, and the jurisprudence of the Labour Courts has interpreted the provisions in ways that have significantly narrowed the scope of lawful strike activity.

The application of sections relating to "essential services," though formally limited to services explicitly listed in the Act, has been extended by administrative practice to cover the garment sector, the most strike-prone sector of the economy, through the use of emergency powers and the invocation of national economic interest. The classification of garment sector strikes as threats to the national economy, on the basis that they disrupt export production and damage Bangladesh's international trade reputation, has been used repeatedly by successive governments as justification for police intervention against industrial action.

The October 2023 garment sector wage protests are the most recent and dramatic illustration of the consequences of this approach. Workers who exercised what they understood to be their legal right to strike and demonstrate in support of wage demands were confronted by police firing live ammunition, resulting in deaths and serious injuries. The government's framing of the protests as threats to the national economy, rather than as the exercise of a fundamental right, reflected the persistent prioritization of investor confidence over workers' rights that has characterized Bangladesh's approach to labour relations.

## 28.3 The Distinction Between Lawful and Unlawful Strikes: A Jurisprudential Analysis

The Bangladesh Labour Courts have developed a substantial body of case law on the distinction between lawful and unlawful strikes, much of which has been criticized by labour rights advocates as unduly restrictive. The courts have tended to apply the procedural requirements for lawful strikes strictly, finding that technical deficiencies in the notice procedure, failure to comply with the exact requirements of the standing orders applicable to the establishment, or striking in connection with a dispute that has been referred to a court all render a strike unlawful regardless of the underlying merits of the workers' demands.

This strict procedural approach to strike legality reflects a broader judicial culture that tends to view industrial action with suspicion and to prioritize the maintenance of production and economic order over the vindication of workers' collective rights. This judicial culture is not unique to Bangladesh; it has been identified by critical legal scholars as a feature of judiciaries in many post-colonial states where the colonial legal heritage emphasized order and the protection of property rights over the vindication of social rights.

The reform of the legal framework for strikes requires attention to both the procedural requirements for lawful strikes and the substantive restrictions on the subjects that can support strike action. On the procedural side, the notice requirements should be simplified and the period of notice reduced; the employer's ability to preempt a lawful strike by referring the dispute to a Labour Court should be limited by the introduction of time limits on litigation that prevent this device from being used as a delaying tactic; and the consequences of technical procedural deficiencies should be proportionalized rather than being treated as automatic rendering of a strike unlawful.

On the substantive side, the definition of lawful strike subjects should be broadened, consistent with the ILO framework, to encompass any matter of economic or social concern to workers, rather than being confined to disputes arising directly from the employment relationship. The growing importance of broader political and social concerns to workers, including the living wage campaign, climate change policy, and social protection, suggests that the traditional restriction of lawful strike subjects to disputes between a specific employer and its own workers is increasingly inadequate.

## 28.4 Solidarity Action and Secondary Strikes: The Question of Associated Action

One of the most contested areas of strike law is the question of solidarity action: the right of workers not directly involved in a dispute to take action in support of workers who are. The

BLA, following the traditional model of British labour law that influenced the colonial Indian statutes, does not explicitly address secondary or solidarity action, and the courts have generally treated such action as unlawful on the basis that it does not arise from a dispute between the employer of the striking workers and those workers themselves.

This restriction on solidarity action is inconsistent with the requirements of genuine freedom of association. The ILO's CFA has held that workers should be able to take industrial action in support of fellow workers faced with unjust treatment, without this action being classified as unlawful. The prohibition of solidarity action in Bangladesh effectively prevents the labour movement from developing the forms of cross-enterprise and cross-sector solidarity that have historically been the source of the labour movement's most significant achievements. If garment workers in one factory cannot support garment workers in another through collective action, the structural isolation of individual factory-level bargaining is reinforced.

The reform agenda in this area should include: explicit statutory recognition of the right to take solidarity action in support of workers facing unjust treatment or violations of their legal rights; a clear legal framework distinguishing between solidarity action that is lawful and action that falls outside the protected sphere; and the extension of legal protection against dismissal and other employer retaliation to workers who participate in lawful solidarity action.

## 28.5 Lockouts: The Employer's Equivalent and Its Regulation

The lockout, the employer's equivalent of the strike, represents the employer's right to exclude workers from the workplace and withhold employment as a means of bringing pressure in the context of an industrial dispute. The BLA provides for the right to lockout in Section 211, in parallel with the provisions governing strikes. The lockout provisions have received far less scholarly and judicial attention than the strike provisions, but they raise important questions of symmetry and power in the industrial relations framework.

The symmetrical treatment of strikes and lockouts in the BLA reflects the formal legal equality of the parties to the employment relationship, but it obscures a fundamental asymmetry of power and consequences. A strike is an act of desperation for workers who typically have few resources to sustain themselves without income; a lockout is an act of strategic calculation for employers who typically have the resources to outlast workers and who may be protected against the financial consequences of production stoppage by business interruption insurance. The formal symmetry of the legal provisions therefore disguises a real asymmetry of economic power that consistently favours employers.

The consequences of this asymmetry have been particularly evident in the Bangladesh garment sector, where employers have used the combination of anti-union practices, blacklisting, and the threat of factory closure to discipline workers who exercise their legal rights. The closure of a garment factory in response to worker organizing, though technically a lockout, has the practical consequence of mass dismissal, since workers have no guarantee of reemployment when the factory reopens. The law's formal treatment of factory closure during a dispute as a lockout, rather than as a dismissal, has created significant difficulties for workers seeking legal remedies.

# CHAPTER TWENTY-NINE: TOWARD REFORM: A BLUEPRINT FOR GENUINE FREEDOM OF ASSOCIATION IN BANGLADESH

## 29.1 The Principles of Reform

The analysis in the preceding chapters of this Part has identified a set of structural deficits in Bangladesh's collective labour rights framework that cannot be addressed through incremental amendment alone. While the 2025-2026 reform process has produced significant advances, the gap between the formal provisions of the law and the substantive reality of collective rights in Bangladesh remains wide. Genuine reform requires a coherent and comprehensive approach, grounded in the philosophical and jurisprudential analysis developed in Chapter Twenty-Two and responsive to the specific conditions of the Bangladesh labour market and political economy.

The reform principles proposed in this chapter are organized around four core commitments: first, universality, the extension of genuine collective rights to all working people in Bangladesh, regardless of sector, employment status, or location; second, effectiveness, the structuring of legal provisions in ways that enable workers to exercise their rights in practice, not merely in theory; third, independence, the development of institutional structures for labour administration and dispute resolution that are genuinely independent of political interference; and fourth, integration, the recognition that domestic labour law reform must be complemented by international supply chain accountability measures and by the broader transformation of the political economy of industrial relations.

## 29.2 Constitutional Reform: Elevating Collective Labour Rights to Fundamental Rights

The most important single reform that could be made to the framework of collective labour rights in Bangladesh is the recognition of freedom of association, collective bargaining, and the right to strike as fundamental constitutional rights, enforceable through the courts. The existing constitutional framework, which places these rights in the Fundamental Principles of State Policy rather than the Fundamental Rights provisions, makes them unenforceable as matters of individual right. Workers who are denied their collective rights have no direct constitutional remedy; they are dependent on whatever statutory framework the legislature chooses to provide.

The constitutional recognition of collective labour rights would have multiple effects. First, it would create a direct legal remedy for workers whose rights are violated, enabling them to seek relief from the High Court Division through writ jurisdiction without the delays and costs of the Labour Court system. Second, it would constrain the legislature's ability to restrict collective rights below the constitutional minimum, preventing the rollback of hard-won protections through simple legislative majority. Third, it would establish a normative framework that shapes the interpretation of all legislation, including the BLA, in a direction that is more protective of workers' collective rights. Fourth, it would create a powerful symbolic statement of the Bangladeshi state's commitment to the equal dignity and democratic standing of working people.

The constitutional amendment required to achieve this transformation need not be elaborately specific. A provision such as the following would provide the necessary constitutional foundation: "Every worker has the right to form and join trade unions and to bargain collectively with their employer through their chosen representative, and to take collective action, including strike, in defence of their economic and social interests. These rights may be limited only by law and only to the extent that is necessary and proportionate in a democratic society." Such a provision would draw on the language of the Canadian Charter of Rights and Freedoms, the South African Constitution, and the International Covenants, and would be consistent with Bangladesh's existing international human rights obligations.

The development of a constitutional jurisprudence of collective labour rights in Bangladesh would inevitably draw on comparative constitutional law, including the Canadian jurisprudence analyzed in Chapter Twenty-Two, the South African Constitutional Court's decisions on socio-economic rights, and the developing European Convention jurisprudence following the European Court of Human Rights' recognition of the right to strike in Enerji Yapi-Yol Sen v. Turkey (2009) and subsequent cases. The establishment of this constitutional foundation is the single most important long-term objective of the collective labour rights reform agenda.

### 29.3 Statutory Reform: A Comprehensive Legislative Agenda

Building on the 2025-2026 reforms and addressing their remaining deficits, the following comprehensive statutory reform agenda is proposed for the development of a genuinely rights-based collective labour rights framework in Bangladesh.

The first element is the introduction of a statutory obligation to bargain in good faith. This obligation should be modelled on the Canadian and Australian frameworks, which require employers and unions to meet at reasonable times, to bargain in good faith on matters falling within the scope of the CBA's mandate, to provide relevant information necessary for bargaining, and to refrain from unilateral changes to wages and conditions during the bargaining process. The failure to bargain in good faith should be defined as an unfair labour practice, remediable through the labour tribunal system with orders including mandatory disclosure of information, injunctions against unilateral changes, and compensation for workers affected by unfair labour practices.

The second element is the introduction of pre-registration protection against anti-union discrimination. The protection against dismissal, demotion, or other adverse treatment on the basis of union activity should apply from the moment workers engage in organizing activity, not merely after a formal registration application has been lodged. This requires the introduction of a statutory definition of "organizing activity" that encompasses the full range of actions by which workers seek to exercise their rights under the Act, including discussing union membership with colleagues, collecting membership cards, attending organizing meetings, and contacting union organizers.

The third element is the reform of the CBA election system to eliminate the opportunities for employer manipulation. This should include: a prohibition on employer communications that threaten or imply adverse consequences from union election; a prohibition on "campaign

contributions" to particular unions by employers; a requirement that all employee lists and contact information be provided to all registered unions on equal terms for the purposes of the election campaign; and the development of secure electronic voting systems that reduce the opportunities for intimidation at the ballot box.

The fourth element is the development of a framework for sectoral collective bargaining. This requires: the amendment of the BLA to provide for the registration of sectoral collective agreements, binding on all employers and workers in the sector; the development of a mechanism for designating industry or sectoral bargaining units, on the application of representative union federations and employer associations; and the establishment of a Sectoral Bargaining Council, with equal representation from employers and union federations, to negotiate and administer sectoral agreements. The garment sector, in which the structural conditions for effective enterprise-level bargaining are most unfavourable, should be the priority sector for the development of sectoral bargaining.

The fifth element is the comprehensive reform of the strike provisions, including: reduction of the notice period for lawful strikes from fourteen days to seven days; elimination of the employer's ability to prevent a lawful strike by referring the dispute to a Labour Court; explicit statutory recognition of solidarity action in support of workers facing violations of their rights; and proportionalization of the consequences of technical procedural deficiencies in strike notices, so that minor deficiencies do not automatically render a strike unlawful.

The sixth element is the amendment of the EPZ Labour Act to extend genuine freedom of association to EPZ workers. This requires: removal of the prohibition on WWA affiliation with external organizations; conversion of the WWA framework into a framework for genuine trade unions, with all the rights and protections of trade unions under the BLA; extension of the DIFE's inspection jurisdiction to EPZ factories on the same basis as non-EPZ factories; and the development of a sectoral bargaining framework for EPZ industries.

The seventh element is the development of a comprehensive enforcement framework. This includes: a doubling of the number of DIFE labour inspectors, with a specific allocation to the investigation and prosecution of unfair labour practices; the introduction of proactive inspections specifically targeting compliance with trade union rights provisions; the development of a digital case management system for unfair labour practice complaints, with public reporting on outcomes; the imposition of substantially increased penalties for anti-union discrimination, at levels that create genuine deterrence for large garment factories; and the introduction of joint and several liability for anti-union discrimination in supply chains, enabling workers to pursue claims against international brands that benefit from anti-union practices in their supplier factories.

### 29.4 Institutional Reform: Building Independent Labour Governance

The effectiveness of any statutory reform agenda depends on the quality and independence of the institutions that administer and enforce it. The history of Bangladesh's labour law is, in significant measure, a history of formal legal provisions that have been undermined by politically compromised, under-resourced, and administratively captured institutions. Building a genuinely

independent and effective labour governance infrastructure is therefore a precondition for the success of any legislative reform program.

The independence of the labour administration from political interference requires several institutional changes. First, the appointment process for senior officials of the Department of Labour and DIFE should be reformed to reduce ministerial discretion and to introduce merit-based selection through an independent commission, similar to the process used for senior judicial appointments. Second, the tenure and security of employment of labour inspectors and other enforcement officials should be strengthened, to reduce their vulnerability to pressure from employers or from political patrons. Third, the budget of the labour administration should be established as a statutory minimum, to prevent arbitrary reduction in response to employer lobbying.

The independence of the Labour Court system requires the separation of the Labour Courts from the general subordinate courts and their staffing with specialist judges who have genuine expertise in labour law and who are appointed and supervised through a process that is insulated from the executive branch. The development of a specialist Labour Court judiciary, with secure tenure, adequate remuneration, and exposure to international developments in labour law through training and comparative study, is essential to the development of a sophisticated and protective body of labour jurisprudence.

The development of the new Alternative Dispute Resolution Authority, created by the 2025-2026 amendments, provides an important opportunity to create a more accessible and faster dispute resolution mechanism. The authority's effectiveness will depend on the caliber and independence of its membership, the adequacy of its resources, and the development of procedures that are genuinely accessible to workers without legal representation. The inclusion of trained worker representatives in conciliation panels, the provision of legal aid to workers in ADR proceedings, and the publication of ADR outcomes as public statistics would all contribute to the authority's effectiveness and legitimacy.

The development of an effective tripartite consultative framework, building on the reformed NTCC and the experience of the 2024-2025 consultation process, is also an important institutional priority. A genuinely tripartite framework, in which workers' representatives have equal standing with employers and the state, and in which decisions are made on the basis of genuine deliberation rather than ministerially determined outcomes, provides the most effective governance mechanism for the ongoing development of labour standards. The institutionalization of the NTCC's role in reviewing and recommending changes to the minimum wage, the BLA, and associated regulations, with a statutory obligation for the government to respond to NTCC recommendations within a defined period, would significantly strengthen the tripartite framework.

### 29.5 International Dimensions: Supply Chain Accountability and the Transformation of the Global Value Chain

The domestic reform agenda, however comprehensive, cannot alone secure the conditions for effective collective labour rights in Bangladesh's garment sector. The structural problem of the

global value chain, in which international brands set prices that make it economically impossible for factories to pay living wages and respect labour rights simultaneously, requires an international response as well as a domestic one.

The EU Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024, creates a new framework for supply chain accountability that has significant implications for brands sourcing from Bangladesh. Under the CSDDD, large European companies are required to conduct human rights due diligence throughout their supply chains, including with respect to freedom of association and collective bargaining rights. Companies that fail to conduct adequate due diligence, or that fail to address identified violations, can be subject to civil liability in European courts. The implementation of the CSDDD creates a new legal incentive for European brands to support the development of genuine collective labour rights in their Bangladeshi supplier factories, since brands that source from factories with systematic anti-union practices may face liability under the directive.

The engagement of international brands in the Bangladesh reform process has been a consistent feature of the post-Rana Plaza landscape, but it has been uneven and often inadequate. The Accord on Fire and Building Safety in Bangladesh, which brought together international brands, global trade unions, and the Bangladesh government in a binding tripartite framework for factory safety, demonstrated that international brands can be made to accept binding accountability for conditions in their supply chains when the political and institutional conditions are right. A comparable framework for freedom of association and collective bargaining, in which brands commit to support the development of genuine union rights in their supplier factories and to accept accountability mechanisms for their compliance with this commitment, would be a transformative development.

The development of such a framework requires engagement with the global trade union movement, particularly IndustriALL Global Union, which represents textile and garment workers globally; with international civil society organizations, including the Clean Clothes Campaign; and with international institutions, including the ILO and the UN Office of the High Commissioner for Human Rights. It also requires engagement with the Bangladeshi labour movement itself, whose leadership and whose specific demands must be at the center of any framework claiming to advance workers' rights.

The most ambitious version of the supply chain accountability agenda would involve the establishment of a binding international treaty on business and human rights, which has been under development at the UN level since 2014 but remains stalled due to opposition from major industrial states. The treaty framework, if realized, would create binding international legal obligations on multinational corporations to respect human rights, including freedom of association, throughout their global operations and supply chains. The realization of this treaty framework would represent the most important international development in labour rights since the ILO's adoption of the Declaration on Fundamental Principles and Rights at Work in 1998.

## 29.6 Worker Power and the Political Economy of Reform

The analysis in this Part has consistently returned to a theme that deserves explicit statement: the legal reform of collective labour rights, however carefully designed and comprehensively drafted, can only be as effective as the organized power of workers that sustains it and enforces it. Legal rights are not self-executing; they are products of political struggle, and they are maintained by the ongoing capacity of workers to organize, to demand their enforcement, and to resist the inevitable attempts of employers and political establishments to erode them.

The history of collective labour rights in Bangladesh is, at its core, a history of the suppression of worker power, and the reform agenda cannot be divorced from the question of how worker power can be rebuilt. This requires attention to several dimensions of worker organization that go beyond the formal legal framework.

First, it requires investment in worker education, in the most expansive sense: education about workers' legal rights and how to enforce them, about the principles of union organization and collective action, about the global dimension of their work and their solidarity with workers in other parts of the global value chain, and about the political and economic systems that shape their conditions of life. The Department of Labour's Industrial Relations Institutes and Labour Welfare Centres play an important role in this education, but they reach only a fraction of the workers who need access to this knowledge, and their curriculum and methods require significant development.

Second, it requires the development of effective and democratic trade unions, at both the enterprise and the federation level. The fragmentation of the Bangladesh labour movement, in which hundreds of small enterprise-level unions compete for recognition and resources without effective federation-level coordination, is a structural weakness that employers have consistently exploited. The development of larger, better-resourced, and more democratically governed union federations, capable of negotiating at the sectoral level and of providing effective legal support and training to their member unions, is a priority for the internal development of the labour movement.

Third, it requires the cultivation of solidarity across the global value chain: the connections between Bangladesh's garment workers and the workers of international brands in the countries where their products are sold, the consumers who buy those products, and the civil society organizations that campaign for their rights. The global solidarity expressed after the Rana Plaza disaster, though imperfectly channeled by the existing institutions of international labour governance, demonstrated the potential of this solidarity as a political force. Building more durable and more institutionalized forms of solidarity, including through the mechanisms of international collective bargaining, remains an important long-term objective.

### 29.7 A Ten-Point Legislative Program for Collective Labour Rights Reform

On the basis of the analysis in this Part, the following ten-point program of legislative and institutional reform is proposed for the collective labour rights framework in Bangladesh.

The first reform is the constitutional recognition of freedom of association, collective bargaining, and the right to strike as fundamental rights, through amendment of the Constitution to include these rights in Part III alongside the other fundamental rights.

The second reform is the introduction of a statutory obligation to bargain in good faith, modelled on the Canadian and Australian frameworks, with unfair labour practice remedies for breach.

The third reform is the extension of pre-registration protection against anti-union discrimination to cover all organizing activity, regardless of whether a formal registration application has been lodged.

The fourth reform is the reform of the CBA election system to eliminate the opportunities for employer manipulation, including rules governing employer conduct during election campaigns and the development of secure electronic voting mechanisms.

The fifth reform is the development of a framework for sectoral collective bargaining in the garment and other major industries, with a Sectoral Bargaining Council and provision for the extension of sectoral agreements to all employers and workers in the sector.

The sixth reform is the comprehensive reform of the EPZ Labour Act to extend genuine freedom of association to EPZ workers, including the conversion of the WWA framework into a framework for genuine trade unions, and the extension of DIFE's inspection jurisdiction to EPZ factories.

The seventh reform is the comprehensive reform of the strike provisions, including reduction of the notice period, elimination of the employer's ability to prevent a lawful strike through Labour Court referral, and explicit recognition of the right to solidarity action.

The eighth reform is the dramatic strengthening of the enforcement apparatus, including a doubling of the number of DIFE labour inspectors with a specific allocation to unfair labour practice investigation, substantially increased penalties for anti-union discrimination, and the introduction of joint and several liability for anti-union discrimination in supply chains.

The ninth reform is the development of an independent and specialist Labour Court judiciary, with secure tenure, adequate remuneration, and specialist training in labour law, supported by a comprehensive legal aid scheme for labour disputes.

The tenth reform is the development of a binding supply chain accountability framework, consistent with the EU CSDDD and the UNGPs, requiring international brands sourcing from Bangladesh to conduct due diligence on freedom of association and collective bargaining rights in their supplier factories, with civil liability for failure to conduct adequate due diligence or to address identified violations.

### 29.8 The Long-Term Vision: A Democratic and Participatory Industrial Relations System

The ultimate aspiration of the reform agenda proposed in this Part is not merely a more efficient and legally compliant industrial relations system, though efficiency and compliance are important. It is the transformation of the relationship between workers and employers in Bangladesh from a relationship of domination and dependency into a relationship of genuine partnership, grounded in the equal dignity and democratic standing of all participants.

This transformation requires not merely legal reform but a cultural and political transformation in the way workers are conceived and in how they conceive themselves. It requires the recognition that the workers who produce Bangladesh's exports are not merely inputs in a global production process but citizens, rights-holders, and participants in the governance of the conditions of their own lives. It requires the acceptance, by employers and by the state, that the claims of workers to decent wages, safe conditions, and genuine collective rights are not obstacles to development but conditions of it: that an economy built on the systematic denial of workers' dignity is not merely unjust but unsustainable.

The garment workers of Ashulia and Gazipur, the jute workers of Khulna, the tea garden workers of Sylhet, the agricultural workers of the Barind tract, and the domestic workers of Dhaka have, through their labour, built the economy of modern Bangladesh. They have done so under conditions of systematic suppression of their collective rights, and they have demonstrated, repeatedly, that they will not accept the denial of their dignity indefinitely. The reform agenda proposed in this textbook is offered not as a gift from above but as a recognition of rights that already exist, that are demanded by justice, and that the law has for too long failed to realize.

The question before Bangladesh's legislators, administrators, and judges is not whether these rights will eventually be realized, but whether they will be realized through a process of genuine democratic reform or through the recurrent cycles of protest, repression, and belated concession that have characterized the history examined in this Part. The analysis of this textbook argues strongly for the former: for a systematic, principled, and rights-based approach to collective labour law reform that takes seriously the philosophical foundations of freedom of association, learns from the comparative experience of other jurisdictions, and places the dignity and democratic standing of workers at the center of the legal project.

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## BIBLIOGRAPHIC NOTES FOR PART FOUR

The analysis in this Part draws upon an extensive range of primary and secondary sources in labour law, political philosophy, comparative industrial relations, and the specific history of Bangladesh's labour movement. The following notes identify the most important sources and provide guidance for further research.

On the philosophical foundations of collective labour rights, the foundational texts include Philip Pettit, Republicanism: A Theory of Freedom and Government (Oxford University Press, 1997) and On the People's Terms: A Republican Theory and Model of Democracy (Cambridge University Press, 2012); Virginia Mantouvalou, "Human Rights and Unfair Dismissal: Private Acts in Public Spaces" (2008) 71 Modern Law Review 912; Alan Bogg, The Democratic

Aspects of Trade Union Recognition (Hart Publishing, 2009) and his 2024 contribution to Philosophical Foundations of Labour Law (Oxford University Press, 2018), edited by Hugh Collins, Gillian Lester, and Virginia Mantouvalou; and Cynthia Estlund, Regoverning the Workplace: From Self-Regulation to Co-Regulation (Yale University Press, 2010).

On the Marxist and critical perspectives, the foundational texts include Antonio Gramsci, Selections from the Prison Notebooks (Lawrence and Wishart, 1971); Evgeny Pashukanis, Law and Marxism: A General Theory (Pluto Press, 1978); Zoe Adams, Labour and the Law: Against the Grain (Cambridge University Press, 2023); and the recent work of Maja Breznik published in the Industrial Law Journal, 2024.

On the history of labour organization in Bengal and Bangladesh, the essential scholarly sources include Dipesh Chakrabarty, Rethinking Working-Class History: Bengal 1890 to 1940 (Princeton University Press, 1989); Rajnarayan Chandavarkar, The Origins of Industrial Capitalism in India (Cambridge University Press, 1994); and Willem van Schendel, A History of Bangladesh (Cambridge University Press, 2009). For the specific history of the Bangladesh garment sector, essential sources include the documentation produced by the Worker Rights Consortium, the Clean Clothes Campaign, Human Rights Watch, and the Solidarity Center, available on their respective websites.

On ILO standards and their application to Bangladesh, the primary sources include ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise, 1948), Convention No. 98 (Right to Organise and Collective Bargaining, 1949), and the extensive jurisprudence of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations. The ILO's annual reports on the application of conventions, and its specific country-level observations on Bangladesh, are available through the NORMLEX database.

On the comparative constitutional jurisprudence of collective labour rights, the essential cases include Health Services and Support v. British Columbia (2007) 2 SCR 391; Saskatchewan Federation of Labour v. Saskatchewan (2015) 1 SCR 245; Enerji Yapi-Yol Sen v. Turkey (European Court of Human Rights, 2009); and the South African Constitutional Court decisions in the National Union of Metalworkers of South Africa v. Bader Bop (2003) and subsequent cases on labour rights under the South African Constitution.

On the Bangladesh-specific legal framework, the primary sources include the Bangladesh Labour Act, 2006 (as amended through the Bangladesh Labour (Amendment) Bill, 2026), the Bangladesh Labour Rules, 2015 (as amended), the Bangladesh EPZ Labour Act, 2019, and the Bangladesh EPZ Labour Rules, 2022. The Labour Reform Commission's April 2025 report, "The Transformation Framework of the World of Work," provides the most authoritative contemporary assessment of the reform agenda. The government's National Action Plans on the Labour Sector, submitted to the ILO governing body and updated regularly through 2025, provide essential factual background on the implementation of reforms.

The analysis of the 2025-2026 amendments draws particularly on the comprehensive commentary in the Bangladesh Law Digest (BDLD), "The 2025 Bangladesh Labour Act

Amendment: An Overview" (March 2026); the reporting of The Daily Star and The Business Standard on the parliamentary passage of the Bangladesh Labour (Amendment) Bill, 2026; and the ILO's country-level assessments published through the Better Work Bangladesh program.

On the EPZ regime and its reform, the foundational sources include the National Action Plan 2021-2026 (as revised and updated), particularly Section 1.5 on EPZ reform; the BEPZA-ILO Two-Year Action Plan (May 2025); the documentation produced by the Committee on Freedom of Association in its decisions on Bangladesh-related complaints; and the academic analysis of the EPZ model in global perspective, including the work of Naila Kabeer, Kalpona Akter, and others who have written on the conditions of women workers in Bangladesh's EPZs.

On supply chain accountability and its implications for Bangladesh, the most important recent sources are the EU Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024; the UNGPs on Business and Human Rights (2011); the academic commentary on the CSDDD and its implications for developing country suppliers, including the analyses published in the Oxford Business Law Blog and in the International Journal of Law and Social Justice; and the Swedwatch report, "Paying the Price for Fashion: Securing a Living Wage for Bangladesh's Garment Workers" (November 2024).

On the right to strike specifically, the essential texts include the Canadian Supreme Court's decisions in Health Services (2007) and Saskatchewan Federation of Labour (2015), analyzed in detail above; the ILO Committee of Experts' digest of decisions on the application of the freedom of association conventions; and the academic literature on the right to strike as a human right, including John Hendy QC and Keith Ewing, A Charter of Workers' Rights (Institute of Employment Rights, 2002) and the more recent work of Nicola Countouris and Simon Deakin on collective labour rights in European and comparative perspective.

On the general theory of industrial relations and collective bargaining, the classic sources of the Oxford School include Allan Flanders, Management and Unions: The Theory and Reform of Industrial Relations (Faber, 1970); Hugh Clegg, The Changing System of Industrial Relations in Great Britain (Blackwell, 1979); and Paul Davies and Mark Freedland, Kahn-Freund's Labour and the Law (Stevens, 1983). The more recent comparative literature includes Comparative Labor Law and Industrial Relations in Industrialized Market Economies, edited by Roger Blanpain (Kluwer, multiple editions); and the work of the European Institute of Industrial Relations, whose annual European Industrial Relations Observatory (EIRO) reviews provide comparative data on collective bargaining coverage, union density, and industrial action across European countries.

On the political economy of the Bangladesh garment sector and its implications for collective labour rights, the essential recent sources include the extensive reporting of the Bangladesh Garment Workers Solidarity on the October 2023 wage protests and their aftermath; the ILO's Better Work Bangladesh annual reports; the Bangladesh Bureau of Statistics data on employment, wages, and working conditions; and the academic analysis of the garment sector's global value chain by Gary Gereffi, Khalid Nadvi, Stephanie Barrientos, and others.

*End of Part Four*

*Part Five will examine the law of occupational safety and health in Bangladesh, including the post-Rana Plaza reform process, the role of the Accord on Fire and Building Safety and the Ready-Made Garment Sustainability Council, the legal framework of the Bangladesh Labour Act and associated regulations, the constitutional and jurisprudential dimensions of the right to safe work, and the reform agenda for a comprehensive occupational safety and health framework that meets the requirements of the ILO's fundamental conventions and the dignity of all workers.*

*The analysis of collective labour rights in Part Four and the analysis of occupational safety and health in Part Five are intimately connected, as the Rana Plaza disaster demonstrated. Workers who had no effective collective voice to raise safety concerns were forced into a building they knew was unsafe, and they died. A genuinely rights-based approach to occupational safety and health requires not merely technical standards and inspection mechanisms but the collective participation of workers in the identification and remediation of hazards. The right to safe work and the right to collective organization are, at the deepest level, aspects of a single commitment to the equal dignity and inviolable humanity of every working person.*

## PART FIVE: OCCUPATIONAL SAFETY AND HEALTH LAW IN BANGLADESH: CONSTITUTIONAL FOUNDATIONS, THE RANA PLAZA CATASTROPHE, POST-DISASTER REFORM, AND THE ARCHITECTURE OF A RIGHTS-BASED FRAMEWORK

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### PREFATORY NOTE TO PART FIVE

Part Four of this work examined the collective dimensions of labour law in Bangladesh: the rights of workers to organize, to form and join trade unions, to bargain collectively, and to take industrial action in pursuit of their interests. The analysis demonstrated that these collective rights are not merely instrumental goods, not merely efficient mechanisms for wage-setting or for producing industrial peace, but expressions of a deeper commitment to the equal dignity and democratic standing of all working people.

Part Five turns to a domain of labour law that is intimately connected to those collective rights, even as it involves a distinct body of legal doctrine, institutional architecture, and regulatory philosophy. That domain is occupational safety and health: the legal framework that governs the conditions under which work is performed, the obligations of employers to prevent work-related injury, disease, and death, and the rights of workers to safe and healthy working environments.

The connection between collective rights and occupational safety is not incidental. It is structural and was demonstrated with tragic conclusiveness by the Rana Plaza catastrophe of 24 April 2013, when 1,138 workers, the vast majority of them young women, died in the collapse of a structurally defective building in Savar, on the outskirts of Dhaka. Those workers knew the building was dangerous. Cracks had appeared in its structure the day before the collapse, and the building had been officially closed. But the workers were ordered back to work by their supervisors and by factory managers acting under pressure from international brands with urgent delivery deadlines. The workers had no effective collective voice through which to resist these

orders, no trade union strong enough to insist on evacuation, no legal right to refuse unsafe work that was practically enforceable. They entered the building because they feared losing their wages, their jobs, and perhaps more, and they died because a building that should never have been permitted to operate as a factory was allowed to do so by a combination of regulatory failure, political corruption, and the structural powerlessness of an unorganized workforce.

The Rana Plaza disaster is therefore not merely a story about occupational safety. It is a story about the relationship between worker power and worker safety, about the connection between the right to organize and the right to live. It is a story about the failures of a regulatory state that was captured by the interests of the industry it was supposed to regulate. It is a story about the global value chain and its capacity to export the costs of cheap fashion onto the bodies of the poorest workers in the world. And it is, twelve years later in 2025, a story whose ending remains unwritten, because the conditions that produced the Rana Plaza disaster have been only partially addressed, and the task of building a genuinely rights-based occupational safety and health framework in Bangladesh remains urgent and incomplete.

This Part examines the law of occupational safety and health in Bangladesh from a comprehensive jurisprudential, historical, comparative, and critical perspective. It begins with the philosophical and theoretical foundations of the right to safe work. It then traces the historical development of OSH regulation from the colonial period through the post-independence era to the current framework. It provides a detailed analysis of the Rana Plaza disaster as both a legal and a political event, and of the post-disaster reform process that produced the Accord on Fire and Building Safety in Bangladesh, the Alliance for Bangladesh Worker Safety, and the RMG Sustainability Council. It examines the current legal framework of OSH regulation under the Bangladesh Labour Act 2006 and its amendments, including the landmark 2025 Ordinance and Bangladesh's historic ratification of ILO Conventions 155, 187, and 190 in November 2025. It analyses the constitutional dimensions of the right to safe work and the jurisprudence of the Bangladesh courts on this question. It examines the institutional architecture of OSH enforcement, including the Department of Inspection for Factories and Establishments, and its structural limitations. It considers the particular vulnerabilities of different categories of workers, including women workers, informal workers, migrant workers, and workers in non-garment sectors. And it concludes with a comprehensive reform agenda for a genuinely rights-based OSH framework that meets the requirements of the newly ratified ILO conventions and the dignity of every working person in Bangladesh.

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## CHAPTER THIRTY: THE PHILOSOPHY AND JURISPRUDENCE OF THE RIGHT TO SAFE WORK

### 30.1 The Right to Safe Work as a Foundational Human Rights Claim

The claim that workers have a right to perform their work in safe and healthy conditions is, on one level, so obviously correct as to appear almost trivially true. No serious moral philosopher would argue that employers are entitled to expose workers to unnecessary risk of death, injury, or disease without their knowledge or effective consent. Yet this apparently simple proposition

is, on closer examination, extraordinarily complex in its theoretical foundations, its institutional implications, and its practical realization. Understanding why workers die at work, why they die in far greater numbers in Bangladesh than in comparable economies, why the legal framework designed to prevent their deaths has so consistently failed, and what a genuinely effective framework would look like, requires engagement with some of the most challenging questions in legal philosophy and political theory.

The most fundamental philosophical question about occupational safety is whether the right to safe work is a genuine human right or merely an instrumental interest that can be traded off against other interests, including the interests of economic growth, international competitiveness, and employer profitability. The mainstream economic analysis of occupational safety would suggest the latter: from an economic perspective, occupational risk is simply one dimension of the employment relationship, and the socially optimal level of risk is determined by a balancing of the costs and benefits of risk reduction, not by any absolute entitlement of workers to be free from risk. On this view, workers can accept higher wages in exchange for higher risks, the so-called compensating wage differential, and the role of law is merely to ensure that this exchange is genuinely voluntary and based on adequate information.

This economic framework, associated with the law and economics school and with scholars like Richard Posner and W. Kip Viscusi, has been enormously influential in Anglo-American regulatory theory, and it has shaped the design of OSH regulation in many jurisdictions. But it is philosophically inadequate as an account of the right to safe work, for several interconnected reasons that a sophisticated jurisprudential analysis must address.

The first inadequacy is epistemic: the theory of compensating wage differentials assumes that workers possess accurate information about the risks they face, so that their acceptance of a particular wage and risk combination can be treated as genuine informed consent. But in practice, workers rarely possess accurate information about the specific health and safety risks of their work. Occupational diseases develop over long periods, causation is difficult to establish, and the information asymmetries between employers and workers are profound. This epistemic problem is compounded in developing country contexts like Bangladesh, where many workers are illiterate or have very limited education, where technical safety information is rarely communicated in accessible forms, and where workers' legal rights are systematically unknown to the workers themselves.

The second inadequacy is structural: the theory of compensating wage differentials assumes that workers have genuine freedom of choice in selecting employment, so that their choice of a higher-risk job at a higher wage is genuinely voluntary. But in conditions of severe labour market inequality, where workers face a choice between accepting hazardous work or facing unemployment and poverty, the notion of voluntary acceptance of risk is a legal fiction rather than a social reality. As Bernard Williams argued in his classic critique of the economic analysis of personal integrity, there are some things that a person should not be expected to accept as the price of employment, regardless of the compensation offered, because some risks are inconsistent with the worker's status as a person rather than a mere instrument of production.

The third inadequacy is moral: even if workers were perfectly informed and genuinely free, the moral quality of the employment relationship is not fully captured by the categories of consent and compensation. The employer who exposes workers to serious risks, even with their consent and even with compensation, is treating those workers as tools rather than as persons, and is thereby violating their dignity in a way that no amount of money can entirely remedy. This is the insight that grounds the human rights approach to occupational safety, the approach developed by Virginia Mantouvalou, James Nickel, and Henry Shue, who argue that the right to safe work is not merely an instrumental interest but a fundamental human right grounded in the equal dignity and humanity of every working person.

Henry Shue's influential framework, developed in Basic Rights: Subsistence, Affluence and U.S. Foreign Policy, provides a particularly useful theoretical foundation. Shue argues that some rights are "basic" in the sense that their enjoyment is a prerequisite for the enjoyment of all other rights: without basic security, a person cannot exercise any other right, because the threat of death or severe injury constantly undermines the effective exercise of all rights. On this account, the right to physical security in the workplace is a basic right in Shue's sense, because the worker who is killed or permanently disabled by a workplace accident is deprived not merely of a particular benefit but of the capacity to exercise any right at all. The right to safe work is therefore, on Shue's analysis, among the most fundamental of human rights, deserving of the strongest possible legal protection.

This philosophical analysis is reinforced by the republican political philosophy examined in Part Four. Philip Pettit's theory of freedom as non-domination provides a particularly powerful lens through which to understand the wrong of unsafe working conditions. The worker who is exposed to serious risk of death or injury by an employer who cannot be effectively held accountable is not merely vulnerable to harm: the worker is dominated, subject to the arbitrary will of the employer in the most basic dimension of human life, the dimension of physical integrity and survival. The elimination of domination in this sense requires not merely that employers avoid actual harm, but that workers be given the power, through law and through collective organization, to ensure that employers cannot impose hazardous conditions on them without accountability. This republican insight connects the law of occupational safety to the collective labour rights analyzed in Part Four, and it explains why the suppression of trade unions in Bangladesh has been so consistently productive of industrial disasters.

### 30.2 The Kantian Foundation: Dignity, Instrumentalization, and the Duty of Safe Work

The Kantian moral tradition provides another important philosophical foundation for the right to safe work. Kant's categorical imperative, in its second formulation, requires that we treat all persons always as ends in themselves and never merely as means. An employer who exposes workers to unnecessary risk of death or serious injury is, on this analysis, treating those workers as mere instruments of production, as means to the end of profit, rather than recognizing them as ends in themselves deserving of unconditional moral respect.

The application of this Kantian analysis to Bangladeshi conditions is not merely theoretical: it describes precisely the moral reality of the Rana Plaza disaster and of the many lesser industrial catastrophes that have punctuated the history of Bangladesh's industrialization. When factory

managers ordered workers into a building they knew to be structurally compromised, those managers were treating those workers as replaceable inputs in a production process, not as human beings whose survival and physical integrity had unconditional moral value. And the international brands that continued to press their Bangladeshi suppliers for impossible delivery deadlines were, in the Kantian sense, complicit in that instrumentalization, treating the bodies of Bangladeshi garment workers as acceptable collateral costs of cheap fashion for Western consumers.

The legal philosopher Martha Nussbaum has developed a closely related analysis in her capabilities approach, which holds that a just society is one that enables all persons to live a fully human life by securing the conditions for the realization of a range of fundamental human capabilities. Among the capabilities that Nussbaum identifies as essential to a fully human life is "bodily integrity," which includes freedom from violent assault and the ability to have adequate occupational health. On Nussbaum's analysis, a legal framework that fails to protect workers' bodily integrity at work is not merely inefficient or suboptimal; it is fundamentally unjust, because it fails to treat workers as full members of the human community deserving of the conditions necessary for a dignified life.

The capabilities approach has been influential in the academic analysis of labour law, and it has been deployed specifically in the analysis of occupational safety by scholars such as Simon Deakin and Gillian Lester. Deakin's analysis of the capabilities approach in the context of occupational health emphasizes that the right to safe work must be understood not merely as a negative right, a right to freedom from employer-imposed harm, but as a positive right that requires the active intervention of the state to create the institutional conditions under which workers can effectively exercise their capability for bodily integrity. This includes not merely the enactment of legal standards but the creation of effective enforcement mechanisms, the empowerment of workers to participate in the identification and remediation of workplace hazards, and the development of a culture of safety that pervades the employment relationship at every level.

## 30.3 The Social Contract Tradition and the Political Economy of Safety Regulation

The social contract tradition in political philosophy, associated with Locke, Rousseau, and Kant, and in its contemporary form with John Rawls, provides a third philosophical foundation for the right to safe work. The social contract theory holds that the legitimacy of political authority rests upon an implicit agreement among the members of a political community to accept the authority of the state in exchange for the protection of their fundamental interests. The protection of physical security, of life and bodily integrity, is among the most fundamental of these interests, and the failure of the state to provide this protection is, on the social contract account, a breach of the political compact that undermines the legitimacy of political authority.

Rawls's theory of justice provides a particularly rigorous version of this argument. As noted in Chapter One of this work, Rawls's "veil of ignorance" thought experiment asks what principles of justice rational persons would choose if they did not know in advance what position they would occupy in the social order. Applied to occupational safety, a Rawlsian analysis would suggest that rational persons, not knowing whether they would be wealthy employers or

impoverished workers, would agree to robust legal protections against workplace risk, because they might find themselves in the position of workers who face serious hazards without adequate legal protection.

The Rawlsian analysis also has implications for the prioritization of regulatory resources. Rawls's "difference principle" holds that inequalities in the distribution of social goods are justified only if they benefit the least advantaged members of society. Applied to OSH regulation, this suggests that the benefits of regulatory compliance should be distributed in a way that prioritizes the protection of the most vulnerable workers, those in the most hazardous occupations, those with the least ability to protect themselves through individual action, and those with the least access to legal redress when they are harmed. In Bangladesh, this principle points strongly toward prioritizing the protection of garment workers, informal sector workers, agricultural workers, domestic workers, and migrant workers, precisely those categories of workers who are most exposed to hazardous conditions and least effectively protected by the existing legal framework.

The political economy of safety regulation complicates but does not undermine this philosophical analysis. The political economy literature, associated with scholars such as George Stigler and Sam Peltzman, suggests that regulatory agencies are systematically susceptible to "capture" by the industries they regulate, because the regulated industries have strong concentrated interests in limiting regulation while the general public, including workers, has diffuse and less effectively organized interests in stronger regulation. In the context of Bangladesh's OSH regulatory framework, this theory of regulatory capture has considerable explanatory power: the successive failures of the government to enforce existing safety standards in the garment and other industries, the corruption of the factory inspection system, and the political influence of the BGMEA and other employer associations over the Ministry of Labour can all be understood, at least in part, as expressions of regulatory capture.

The solution to regulatory capture, in both the political economy and the philosophical literature, is not merely to enact stronger laws but to restructure the political economy of regulation in ways that give workers and their organizations a genuine stake in and genuine influence over the regulatory process. This is the insight that animates the tripartite model of OSH governance, in which workers, employers, and the state share responsibility for the development and enforcement of safety standards. But as the analysis below will demonstrate, the tripartite model in Bangladesh has been consistently undermined by the inequality of the parties, by the weakness of worker organizations, and by the political influence of employer interests.

### 30.4 The International Human Rights Framework and the Right to Safe Work

The right to safe and healthy working conditions is firmly established in international human rights law. Article 7 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of just and favorable conditions of work, including safe and healthy working conditions. Article 12 recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which the Committee on Economic, Social and Cultural Rights has interpreted to include the right to occupational

health and safety. Bangladesh ratified the ICESCR in 1998, and the treaty obligations thereby assumed are directly relevant to the assessment of Bangladesh's domestic OSH framework.

The ILO's framework on occupational safety and health, which underwent a historic transformation in its significance for Bangladesh in November 2025, provides the most detailed and authoritative international standard for OSH law and practice. The foundational instruments in this framework are ILO Convention No. 155 on Occupational Safety and Health (1981) and its accompanying Recommendation No. 164, ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health (2006), and ILO Convention No. 190 on Violence and Harassment (2019). All three of these Conventions were ratified by Bangladesh on 20 November 2025 in an act described by the ILO and by Bangladesh's Labour and Employment Adviser as a historic milestone.

Convention No. 155 requires member states to formulate, implement, and periodically review a coherent national policy on occupational safety and health. It specifies that this policy must aim at preventing accidents and injury to health arising out of, linked with, or occurring in the course of work, by minimizing, so far as reasonably practicable, the causes of hazards inherent in the working environment. The Convention sets out the responsibilities of employers, including the obligation to ensure that workplaces are safe and without risk to health, that plant and equipment are maintained in a safe condition, that workers are provided with adequate information, training, and supervision to ensure their safety, and that workers are not required to work in conditions that pose imminent and serious danger to their life or health.

Convention No. 187 requires member states to promote continuous improvement of occupational safety and health, in order to prevent occupational injuries, diseases, and deaths, by the development of a national policy, national system, and national programme on OSH. The Convention emphasizes the importance of a preventive safety and health culture in which workers can freely exercise their right to a safe and healthy working environment.

Convention No. 190, which is the first international instrument to address violence and harassment comprehensively in the world of work, requires member states to adopt an inclusive, integrated, and gender-responsive approach to violence and harassment, including through the adoption of legislation and policies, the promotion of awareness, and the provision of accessible remedies, support, and rehabilitation for victims. The ratification of Convention No. 190 is of particular significance in the Bangladeshi context, where violence and harassment against workers, including sexual harassment of women garment workers, has been extensively documented and has been a consistent obstacle to the realization of workers' rights.

The ILO's declaration of Conventions 155 and 187 as fundamental conventions in 2022 was a landmark development in international labour standards, because it elevated occupational safety and health to the status of a fundamental right alongside the other core labour standards on freedom of association, collective bargaining, forced labour, child labour, and discrimination. This elevation reflects the growing international consensus that the right to a safe working environment is not merely an important welfare interest but a fundamental human right that deserves the same unconditional respect as civil and political rights. Bangladesh's ratification of

these fundamental conventions in November 2025 thus represents not merely a technical legal step but a moral and political commitment of the highest order.

## 30.5 The Theoretical Framework of Preventive OSH Law: From Compensation to Prevention

The theoretical framework of OSH law has undergone a profound transformation in the past half century, a transformation that is directly relevant to the assessment of Bangladesh's existing framework and the design of necessary reforms. The older framework, which continues to exert significant influence in many jurisdictions including Bangladesh, is fundamentally compensatory: it accepts that workers will be injured and killed at work, and it provides mechanisms for compensation after the fact, through workers' compensation schemes, common law tort actions, and ex post regulatory penalties. The newer framework, which is increasingly required by international standards and which reflects the philosophical commitments outlined above, is fundamentally preventive: it aims at eliminating hazards before they cause harm, and it treats every preventable workplace death as a moral and legal failure, not as an acceptable cost of industrial activity.

The shift from compensation to prevention reflects several theoretical insights. The first is the distinction between ex ante and ex post mechanisms of risk management. Ex post mechanisms, which provide remedies after harm has occurred, are theoretically appealing because they preserve the autonomy of parties to make their own decisions about risk and provide incentives for risk reduction through the threat of liability. But in the context of occupational safety, ex post mechanisms are systematically inadequate because workers cannot effectively anticipate and price the risks they face, because the causation of occupational disease is often too diffuse to establish in court, because many victims are too poor to pursue legal remedies, and because the threat of ex post liability has historically been insufficient to produce optimal levels of workplace safety in Bangladesh and comparable jurisdictions.

The second insight is the distinction between reactive and proactive models of compliance. The reactive model, in which regulators respond to accidents and complaints, is inevitably too slow and too limited to prevent the accumulation of systemic hazards that lead to major industrial catastrophes. The proactive model, in which regulators conduct regular inspections, require employers to conduct and document risk assessments, and engage workers in the continuous identification and management of hazards, is far more effective at preventing serious harm, because it addresses hazards before they materialize into accidents.

The third insight is the importance of management systems and organizational culture in determining safety outcomes. The research of James Reason, author of the influential "Swiss cheese model" of accident causation, demonstrated that major industrial accidents are rarely the result of a single cause or a single failure, but rather reflect the alignment of multiple latent system failures, "holes in the cheese." This organizational systems analysis of accident causation has profound implications for OSH law, because it suggests that preventing accidents requires not merely the enforcement of specific technical standards but the creation of organizational systems and cultures in which safety is treated as a fundamental value, in which near-misses are

reported and investigated rather than concealed, and in which workers at every level have the authority and the obligation to stop unsafe work.

This organizational systems analysis is reflected in the contemporary approach to OSH regulation that has been adopted in jurisdictions such as Australia, the United Kingdom, and Canada, which require employers to establish and maintain systematic approaches to hazard identification, risk assessment, and risk control, and which give workers and their representatives a legally protected role in this process. It is also reflected in the approach of ILO Convention No. 155 and Recommendation No. 164, which emphasize the employer's obligation to establish an "occupational safety and health management system" as a framework for preventive action.

In Bangladesh, the prevailing approach has remained largely reactive and compliance-based, focused on the specification and enforcement of technical standards rather than on the cultivation of a preventive safety culture. The analysis below will demonstrate that this approach has been comprehensively inadequate, and that the transition to a genuinely preventive, systems-based, and worker-participatory approach is the central challenge of OSH reform.

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## CHAPTER THIRTY-ONE: THE HISTORICAL DEVELOPMENT OF OCCUPATIONAL SAFETY AND HEALTH REGULATION IN BANGLADESH

### 31.1 The Colonial Origins: Factory Legislation and the Limits of Colonial Protection

The history of occupational safety and health regulation in Bangladesh begins, as so much else in the country's legal history, with the British colonial period and the legislative framework that Britain constructed to manage the labour force of its Indian empire. The colonial factory legislation was not, in its origins, primarily motivated by concern for the welfare of workers; it was motivated by a combination of humanitarian campaigning, competitive pressure from British manufacturers who complained of unfair advantage enjoyed by colonial factories operating without safety constraints, and the state's interest in maintaining a productive and minimally discontented labour force.

The first Indian Factories Act of 1881 was a modest and heavily compromised measure. It applied only to textile factories employing 100 or more workers and using power-driven machinery, and its provisions were limited to prohibiting the employment of children under seven years of age, limiting the hours of work for children and women, and requiring the fencing of dangerous machinery. There was no provision for general safety standards, no system of regular inspection, and no meaningful penalties for non-compliance.

Subsequent amendments in 1891 and 1911 extended the scope of coverage and strengthened some provisions, but the fundamental character of the legislation remained unchanged: it was minimum-standards legislation designed to manage the most egregious abuses of the colonial industrial system, not a comprehensive framework for the promotion of occupational safety and health. The Bengal Factory Rules enacted under these Acts contained specific technical requirements for ventilation, lighting, and sanitation, but enforcement was minimal and the rules

were routinely ignored by factory owners who knew that the inspection system was understaffed, underfunded, and susceptible to corruption.

The Mines Act of 1923, the Dock Workers (Safety, Health and Welfare) Act of 1931, and the Petroleum Act of 1934 addressed specific hazardous industries, but the overall picture of colonial OSH regulation was one of systematic inadequacy. The colonial state had neither the will nor the capacity to enforce its own safety standards, and the political power of European and Indian capital ensured that the interests of factory owners consistently prevailed over the welfare of workers in the formulation and enforcement of safety legislation.

The colonial OSH legacy bequeathed to independent Bangladesh in 1971 was therefore not merely inadequate technical standards but a regulatory culture of non-enforcement, a tradition of close relationships between factory owners and government officials, and an acceptance of workplace risk as the normal condition of industrial life rather than as a preventable harm that the state had an obligation to address.

### 31.2 The Pakistan Period: Industrial Growth and Regulatory Stagnation

During the Pakistan period from 1947 to 1971, the territory of East Pakistan experienced both economic neglect, in the sense of systematic discrimination in the allocation of development resources, and a significant expansion of industrial activity, particularly in the jute processing industry that was East Pakistan's primary export industry. The jute mills of Khulna and Narayanganj employed hundreds of thousands of workers under conditions that were, by any standard, hazardous in the extreme.

The Factories Act of 1934, which replaced the earlier factory legislation and applied to both wings of Pakistan, provided a more comprehensive framework of safety standards, including requirements for the guarding of dangerous machinery, the provision of first aid facilities, fire prevention measures, and welfare facilities. But enforcement in East Pakistan was even weaker than in colonial Bengal, because the factories inspectorate was understaffed, underfunded, and focused primarily on the large-scale jute mills, leaving the growing informal industrial sector entirely unregulated.

The political economy of the Pakistan period was characterized by the exploitation of East Pakistani resources and labour by a West Pakistani ruling class that had no direct interest in the welfare of East Pakistani workers. The systematic underfunding of East Pakistan's labour administration and inspection services was one expression of this exploitation, but it also reflected a more general pattern of colonial within colonial governance that treated East Pakistani workers as disposable inputs in a production process rather than as citizens with rights and dignity.

The labour movement of East Pakistan, which as Part Four of this work has described, was deeply connected to the Bengali nationalist movement, did organize significant campaigns for improved working conditions in the jute mills and other industries. The major strikes of the 1950s and 1960s included demands for safety improvements alongside demands for higher wages and trade union recognition. But the political suppression of the labour movement that

followed the imposition of martial law in 1958 under General Ayub Khan effectively silenced these demands and left the regulatory framework of occupational safety stagnant for a decade.

The Liberation War of 1971, which claimed the lives of millions of Bangladeshis and destroyed a significant portion of the country's industrial infrastructure, created both an opportunity and a necessity for a new approach to labour regulation in the newly independent state. But the conditions of post-liberation reconstruction, including extreme economic fragility, the need to rebuild destroyed industries, and the political priority accorded to national consolidation, meant that substantive reform of the OSH framework was not among the immediate priorities of the new government.

### 31.3 Post-Independence Development: From Jute to Garments and the New Industrial Safety Challenge

The first two decades of Bangladesh's independence saw a gradual diversification of the industrial economy, beginning with the dominant jute processing sector and expanding, from the late 1970s onwards, into the ready-made garments sector that would transform Bangladesh's economic profile and its exposure to occupational safety challenges. The emergence of the garment sector, analyzed in detail in Part Three of this work, created a new set of occupational safety challenges that the inherited regulatory framework was entirely unprepared to address.

The garment factories that proliferated in Dhaka and Chittagong from the early 1980s were, for the most part, established in existing buildings that had not been designed for industrial use: multi-story residential and commercial buildings that were converted into factories without structural assessment, fire safety provision, or adequate egress. The factory floors were crowded, poorly ventilated, and often inaccessible to firefighters because the buildings had too few exits and too narrow staircases. Electrical wiring was frequently improvised and inadequate. Chemical hazards from dyes and solvents were uncontrolled. Machinery was unguarded. Welfare facilities were minimal or absent.

The official response to these conditions was the continued application of the colonial Factories Act framework, which was theoretically comprehensive but practically unenforceable given the resources available to the inspection system. The Chief Inspector of Factories, operating under the Ministry of Labour and Manpower, was responsible for the inspection of all factories, but the inspectorate had far too few inspectors to provide regular coverage of the rapidly multiplying garment factories, and the political influence of the BGMEA ensured that enforcement was consistently light.

The first major industrial disaster of the garment sector occurred in April 1990, when a fire at the Saraka garment factory in Dhaka killed at least 25 workers. This disaster attracted significant media attention and some calls for regulatory reform, but no fundamental change in the regulatory framework followed. A series of further disasters punctuated the following two decades: fires at the Textile factory in Chittagong in 2000, the Chowdhury Knitwear factory fire in 2001, the KTS Textile Industries fire in Chittagong in 2006 that killed 84 workers, and many others. Each disaster prompted expressions of official concern and promises of investigation and reform, but the fundamental inadequacy of the regulatory framework remained unchanged.

The political economy of this persistent regulatory failure is not difficult to understand. The garment industry was the country's principal source of foreign exchange earnings and a major employer of impoverished workers, particularly women, who had few alternative economic opportunities. The industry's leadership, organized through the BGMEA, had close political connections to successive governments and was skilled at translating its economic importance into political influence. The enforcement of safety standards meant compliance costs, and compliance costs meant potential competitive disadvantage in an industry where international buyers consistently pressed for lower prices. In this political economy, the regulatory apparatus was systematically inclined toward accommodation of the industry's interests rather than vigorous enforcement of safety standards.

### 31.4 The Tazreen Fashions Fire: A Harbinger of Catastrophe

On 24 November 2012, a fire broke out at the Tazreen Fashions garment factory in Ashulia, near Dhaka. The fire killed at least 112 workers, making it the deadliest garment factory fire in Bangladesh's history at that time. The circumstances of the Tazreen fire encapsulated every dimension of the regulatory failure that characterized the Bangladesh OSH system.

The factory was located in a multi-story building. The ground floor was used as a warehouse for finished garments, and flammable materials were stored on the lower floors in a way that ensured that the fire, once started, would spread rapidly. The building had inadequate fire exits: some were locked, others too narrow for rapid evacuation. Supervisors initially told workers to return to their workstations when the fire alarm sounded, contributing critically to the death toll. The factory had passed compliance audits conducted by commercial auditing firms retained by international brands, suggesting that the commercial auditing system was a profoundly unreliable mechanism for ensuring genuine safety compliance.

The international response to the Tazreen fire included expressions of shock and condolence from major brands, some of which had been sourcing from the factory, and renewed calls for reform of factory safety standards. But the Tazreen fire did not produce a fundamental transformation of the regulatory framework: it produced incremental adjustments that left the structural inadequacies of the system essentially intact. It was left to the much greater catastrophe of Rana Plaza to produce the systemic pressure for fundamental change that Tazreen failed to generate.

### 31.5 Rana Plaza: The Architecture of a Catastrophe

The collapse of the Rana Plaza building on 24 April 2013 is the central event in the modern history of Bangladesh's occupational safety and health law, and no analysis of the current framework can avoid a sustained engagement with the circumstances, causes, and consequences of this catastrophe. The collapse killed 1,138 workers, the exact number confirmed after weeks of extraction work, and injured more than 2,500 others, many of them permanently disabled. It remains the deadliest garment factory disaster in history and one of the deadliest industrial accidents in the world in the twenty-first century.

The Rana Plaza building in Savar had been constructed with permits for commercial and retail use, not for use as a factory. The building's owner, Mohammad Sohel Rana, had reportedly added additional floors to the building without structural assessment or building permits, and the additional weight of industrial machinery, water tanks, and generator sets added to the upper floors had placed the structure under stresses it was not designed to withstand. Cracks had been observed in the building's structure on 23 April 2013, the day before the collapse. A structural engineer who visited the building reportedly advised that it was unsafe. The bank and shops on the lower floors closed in response to these concerns. But the factory owners on the upper floors ordered their workers to return to work the following morning, under threat of losing a month's wages.

The political dimensions of the Rana Plaza disaster are as important as its physical dimensions. Sohel Rana was a local political leader with connections to the ruling Awami League, and his political connections had reportedly facilitated the construction of the building in violation of building codes and the operation of the factories in violation of safety standards. The corruption that allowed Rana Plaza to operate was not exceptional or aberrant; it was a systematic feature of the political economy of construction and industrial regulation in Bangladesh, in which political connections were routinely used to evade regulatory requirements.

The supply chain dimensions of the disaster were equally important. Among the brands found to have been sourcing from Rana Plaza at the time of the collapse were Primark, Mango, El Corte Ingles, Matalan, Benetton, Walmart, Children's Place, and many others. The relationship between these brands and the factories in Rana Plaza was typically indirect and deniable: orders were placed through intermediary suppliers, and many brands initially denied any connection to the building. But the investigation conducted by the Worker Rights Consortium, the Clean Clothes Campaign, and other organizations established beyond doubt that major international brands were directly implicated in the conditions that led to the disaster.

The compensation question that arose after Rana Plaza was itself legally and philosophically complex. The workers killed and injured at Rana Plaza had no access to effective workers' compensation in the domestic system, because the compensation provisions of the Bangladesh Labour Act were wholly inadequate to address the scale of the disaster, and because many of the victims were employed through complex subcontracting arrangements that obscured the direct employment relationship. The Rana Plaza Donors Trust Fund, established under the facilitation of the ILO, eventually distributed approximately $30 million in compensation to survivors and families of victims, but this figure was widely regarded as far less than adequate, and several major brands refused to contribute.

The legal proceedings that followed Rana Plaza revealed the deep inadequacy of Bangladesh's criminal law framework for corporate accountability. The criminal prosecution of Sohel Rana for culpable homicide proceeded at a glacial pace through the courts, and as of 2025, more than a decade after the disaster, a definitive verdict had still not been delivered. The prosecutions of factory owners and government officials involved in the building's approval and operation were similarly delayed and inadequate. The experience of Rana Plaza demonstrates with stark clarity that Bangladesh's legal framework provided no effective mechanism for holding those responsible for preventable industrial deaths accountable in any meaningful sense.

# CHAPTER THIRTY-TWO: THE POST-RANA PLAZA REFORM ARCHITECTURE: ACCORD, ALLIANCE, AND THE RMG SUSTAINABILITY COUNCIL

## 32.1 The International Response: The Accord on Fire and Building Safety in Bangladesh

The international response to the Rana Plaza disaster was, in several respects, unprecedented in the history of global supply chain governance. Within weeks of the collapse, major international brands, trade unions, and NGOs began negotiating a binding agreement to address factory safety in Bangladesh's garment industry. The result was the Accord on Fire and Building Safety in Bangladesh, commonly known as the Bangladesh Accord, signed in May 2013.

The Accord represented a fundamental departure from the voluntary, brand-driven compliance model that had dominated supply chain safety governance until that point. Unlike the commercial compliance audits conducted by firms such as Bureau Veritas, SGS, and Intertek, which had consistently failed to identify the structural hazards that made buildings like Rana Plaza death traps, the Accord was a legally binding agreement between brands and trade unions. It required signatory brands to ensure that their suppliers' factories were inspected by independent technical experts, that identified safety hazards were remediated, and that brands financially support the remediation process. Critically, it included provisions for the suspension of sourcing from factories that failed to remediate identified hazards within specified timeframes, and it gave trade unions a role in the governance of the program.

The binding character of the Accord was its defining and most controversial feature. Brands that had resisted binding commitments for decades were pressured by public outrage and consumer campaigns into signing an agreement that gave workers and their unions genuine legal rights to enforce safety standards. The Accord included a complaints mechanism through which workers and unions could raise concerns about safety conditions, and it provided for international arbitration of disputes between brands and the trade unions that were signatories to the agreement.

By the time the initial Accord period expired in 2018, the program had inspected more than 1,600 factories and identified well over 100,000 safety hazards. A significant proportion of these hazards had been remediated, producing a measurable improvement in the physical safety conditions of factories covered by the program. The Accord's independent inspection body produced detailed publicly accessible reports on factory safety conditions, creating a degree of transparency that had been entirely absent from the previous commercial audit system.

The Accord's successor program, the 2018 Transition Accord, extended the program's operations while transferring primary responsibility for factory safety monitoring to a Bangladesh-based institution, the RMG Sustainability Council. The International Accord for Health and Safety in the Textile and Garment Industry, signed in 2021, further extended and expanded the program, with a broader scope of application and a strengthened governance structure. As of 2025, the International Accord continued to operate in Bangladesh, with a Bangladesh program facilitated

by the RSC, and had extended its operations to other garment-producing countries including Pakistan.

The legal character of the Accord and its successors raises important jurisprudential questions about the nature of transnational private governance and its relationship to public law. The Accord is not a state treaty and does not form part of Bangladesh's domestic law. It is a private agreement between commercial entities (brands) and international trade union federations. Yet it has produced more effective enforcement of safety standards in the factories it covers than the state-based regulatory system has managed to achieve over decades. This paradox, in which transnational private governance is more effective than public law, reflects the structural power of international brands and the weakness of the Bangladeshi regulatory state, but it also raises profound questions about legitimacy, accountability, and the appropriate allocation of responsibility between public and private actors in the governance of global supply chains.

The academic analysis of the Accord has been extensive and sophisticated. Brishen Rogers, in his analysis of the Accord in the context of global labour governance, has argued that it represents a form of "private regulatory law" that challenges conventional categories of public and private, international and domestic, binding and voluntary. Virginia Mantouvalou has analyzed the Accord as an expression of the human rights responsibility of transnational corporations under the UN Guiding Principles on Business and Human Rights. Anna Triponel and others working in the business and human rights field have assessed the Accord as a model for the mandatory due diligence frameworks that are now being developed in Europe and elsewhere.

The limitations of the Accord model are also important to acknowledge. The Accord covers only those factories that supply signatory brands, which is a significant but not comprehensive subset of Bangladesh's garment industry. Factories that do not supply signatory brands, including many of the smaller and more dangerous factories that supply brands without Accord commitments, remain outside the program's scope. The program addresses fire, electrical, and structural safety hazards, but its scope has been more limited in relation to other occupational health hazards, including chemical exposures, musculoskeletal disorders from repetitive strain, and the psychosocial hazards associated with excessive production pressure, verbal abuse, and sexual harassment. And the governance structure of the RSC has been criticized by trade unions for giving excessive influence to employers, a criticism that the Clean Clothes Campaign and IndustriALL have articulated publicly in recent years.

### 32.2 The Alliance for Bangladesh Worker Safety: A Voluntary Counterpart

Alongside the Accord, a group of North American brands, led by Walmart and Gap, established a parallel initiative, the Alliance for Bangladesh Worker Safety, in July 2013. The Alliance was explicitly designed as a voluntary alternative to the binding Accord, reflecting the resistance of major American brands to legally binding supply chain accountability commitments. The Alliance covered a similar number of factories and conducted inspections and remediation activities broadly similar to those of the Accord, but without the legally binding character, the worker rights provisions, or the governance role of trade unions that distinguished the Accord.

The Alliance's five-year program concluded in 2018, and it was not renewed. Its operations have been widely assessed as less effective than the Accord's, in part because the absence of binding commitments and the lack of worker organization in the governance structure reduced the accountability pressure on factories to complete remediation. The contrast between the Accord and the Alliance has been extensively analyzed in the academic literature on supply chain governance, and the consensus in this literature is that the binding, worker-empowering model of the Accord produced better safety outcomes than the voluntary, brand-controlled model of the Alliance. This comparative evidence has been influential in the design of mandatory due diligence frameworks in Europe, particularly the EU Corporate Sustainability Due Diligence Directive, which as noted in Part Four represents a fundamental shift toward binding supply chain accountability.

### 32.3 The RMG Sustainability Council: A National Successor with Structural Tensions

The RMG Sustainability Council, established in June 2020 as a tripartite body comprising equal representation from garment manufacturers, international brands, and trade unions, was intended to serve as a permanent, Bangladesh-based successor to the Accord's factory safety monitoring functions. The RSC was presented as a step toward nationalization of the safety monitoring function, toward the development of a domestic institutional capacity for factory safety governance that could eventually operate independently of the involvement of international brands.

The RSC's performance in the years since its establishment has been mixed and has attracted significant critical attention. The Council conducts factory inspections and monitors remediation of identified hazards, continues the Accord's worker complaints mechanism, and provides training on safety management to factory managers and workers. But the pace of remediation has slowed significantly compared to the Accord period, as the Clean Clothes Campaign, IndustriALL, and the Bangladesh garment workers' federations have repeatedly documented. A May 2024 report found that approximately one-fifth of Bangladesh's garment factories still do not meet fire, electrical, and structural safety standards eleven years after Rana Plaza.

The governance tensions within the RSC are a significant part of the explanation for this slowdown. The tripartite structure gives employers and brands together a majority of seats on the governing board, and union representatives have complained that their concerns are consistently outvoted by the employer majority. The RSC's dispute resolution mechanism, which is supposed to provide a route for workers and unions to challenge factory safety conditions, has been criticized as slow and inadequately independent. And the RSC's scope of coverage remains limited to factories supplying Accord-signatory brands, leaving a substantial portion of the industry outside its mandate.

The expansion announced in November 2025, extending the RSC's worker complaints mechanism beyond OSH to cover broader labour rights issues, represents a significant development that addresses some of these criticisms. But the fundamental governance tensions of the RSC remain unresolved, and the question of whether a tripartite body dominated by employer interests can effectively enforce safety standards against those same interests is one that the RSC's experience to date has answered, at best, ambiguously.

The broader significance of the RSC as a model of national factory safety governance is also complex. The RSC's tripartite structure in principle offers a model for institutionalizing the social partnership between employers, workers, and the state in the management of factory safety that ILO Convention No. 155 envisages. But the RSC is not a state body; it is a private association, and its authority derives from the contractual commitments of its members rather than from public law. The relationship between the RSC and the state regulatory system, particularly DIFE, remains underdeveloped and poorly coordinated, creating gaps in coverage and unclear lines of accountability.

### 32.4 The Domestic Regulatory Response: DIFE and the National Action Plan

The Bangladeshi government's immediate response to the Rana Plaza disaster included several significant regulatory initiatives. The National Tripartite Plan of Action on Fire Safety and Structural Integrity, developed in the months following Rana Plaza, established a framework for the inspection of approximately 3,500 garment factories that fell outside the scope of the Accord and Alliance programs. This program, conducted by DIFE with ILO technical support, represented a significant expansion of the government's factory inspection activities, but it also exposed the severe capacity limitations of the state inspection system.

DIFE, formally the Department of Inspection for Factories and Establishments under the Ministry of Labour and Employment, is the primary state body responsible for the enforcement of occupational safety and health standards across all industries in Bangladesh. At the time of the Rana Plaza disaster, DIFE employed approximately 300 inspectors for a country with more than 100,000 registered factories, a ratio so inadequate as to render systematic inspection essentially impossible. International assistance provided after Rana Plaza allowed a significant expansion of the inspectorate, but as of 2024, DIFE still employed fewer than 900 inspectors, a number that remains wholly inadequate for comprehensive coverage of the industrial sector.

The qualitative dimension of DIFE's inspection capacity is as important as the quantitative dimension. Many DIFE inspectors lack specialized technical training in structural engineering, fire safety, and chemical hazards, the precise areas of expertise most relevant to the prevention of major industrial accidents. The inspection methodology has traditionally been focused on compliance with specific technical standards rather than on the assessment of systemic safety management, and the inspection process has been susceptible to corruption, with documented cases of factory owners bribing inspectors to overlook violations.

The National Occupational Safety and Health Policy, adopted by the government in 2013 in the immediate aftermath of Rana Plaza, established a policy framework for OSH governance that included commitments to strengthening the legal framework, building the capacity of the inspection system, promoting OSH awareness and training, and developing a national OSH data system. A National Plan of Action on OSH was subsequently developed to operationalize the policy's commitments. These policy documents represented important progress in the development of a strategic approach to OSH governance, but their implementation has been inconsistent and their impact limited by the persistent capacity and resource constraints of the state system.

# CHAPTER THIRTY-THREE: THE LEGAL FRAMEWORK OF OCCUPATIONAL SAFETY AND HEALTH UNDER THE BANGLADESH LABOUR ACT 2006

## 33.1 The Structure and Scope of OSH Provisions in the Bangladesh Labour Act

The Bangladesh Labour Act 2006 (BLA) contains the primary statutory framework for occupational safety and health in Bangladesh. The OSH provisions of the BLA are principally contained in Chapter IV, which addresses health, hygiene and safety, and Chapter V, which addresses safety provisions specific to particular industrial processes. The Act also contains provisions on welfare facilities in Chapter VI, on working hours and leave in Chapter VII, and on the general regulatory framework including inspection and penalties in later chapters. The Bangladesh Labour Rules 2015 elaborate the technical requirements of the Act and provide more detailed specifications for compliance.

The principal obligation of the BLA in the field of OSH is imposed on employers by Section 51, which requires that every factory be kept in a clean state, and by the cluster of provisions in Chapter IV that address lighting, ventilation, overcrowding, dangerous fumes, dust and fire prevention, fencing of machinery, and the provision of first aid. Section 52 requires that the number of workers employed in a factory room shall not be such as to cause risk of injury to the health of the workers. Sections 61 to 79 address fire precautions in considerable detail, including requirements for the provision of fire exits, fire alarms, fire extinguishers, and fire escape drills.

The employer's general duty under the BLA to ensure the safety of workers is articulated in terms that are considerably more specific and technical than the general duty provisions in more recent OSH legislation in comparable jurisdictions. The UK Health and Safety at Work Act 1974, for example, imposes a general duty on employers to ensure, so far as is reasonably practicable, the health, safety, and welfare at work of all their employees, and leaves the specification of how this duty is to be discharged largely to the employer and to supplementary regulations. The BLA's approach, by contrast, is to enumerate specific technical requirements, which is in some ways more transparent but less adaptable to the enormous variety of hazards encountered in different industrial settings.

Section 89 of the BLA addresses safety committees, requiring every establishment employing 50 or more workers to form a Safety Committee comprising representatives of both management and workers. The Safety Committee's functions include identifying unsafe or unhealthy conditions and practices, examining the causes of accidents, taking remedial action, and liaising with the government inspector on safety matters. The provision for worker participation in safety management through Safety Committees is an important element of the BLA's approach to OSH governance, and the committees established in garment factories under the Accord and RSC programs have, in many cases, been effective in identifying and addressing safety hazards.

However, the 2022 amendment to the BLA, introduced under the Hasina government, reduced the rights of workers on Safety Committees and granted more power to factory owners, a development that the Clean Clothes Campaign and IndustriALL Bangladesh Council have

identified as a significant regression in worker participation rights. This amendment illustrates the consistent pattern in the political history of Bangladesh's labour law, in which progressive reforms are followed by regressive amendments that erode the gains made, often at the initiative of employer interests operating through their political connections.

The provisions of the BLA on compensation for workplace injuries and occupational diseases are contained in Chapter XII, which establishes an employer's liability to compensate workers for injuries sustained in the course of employment. Section 150 provides for compensation for fatal and non-fatal injuries, with amounts specified in Schedule V of the Act. The compensation amounts specified in the BLA have been consistently criticized as inadequate. The maximum compensation for fatal injury, calculated on the basis of monthly wages and a multiplier, produces amounts that are a small fraction of the economic loss suffered by the worker's family, particularly for young workers with long working lives ahead of them. And the compensation system is subject to the practical barriers that characterize access to justice in Bangladesh more generally: the process of claiming compensation through the Labour Court is slow, expensive, and inaccessible to most workers, particularly those in the informal sector.

### 33.2 The 2013 Amendment: Post-Rana Plaza Legislative Reforms

The Bangladesh Labour (Amendment) Act 2013 was the principal domestic legislative response to the Rana Plaza disaster, and it addressed several of the most obvious weaknesses in the pre-disaster framework. The most significant amendments included: a requirement that all commercial buildings used as factories obtain a building inspection certificate before occupancy; strengthened provisions on fire safety, including requirements for fire escapes and sprinkler systems in certain categories of buildings; an increase in the penalties for safety violations; a strengthening of the provisions on Safety Committees; and several provisions on worker compensation and social protection.

The 2013 amendments also addressed trade union rights and collective bargaining, as analyzed in Part Four, in recognition of the connection between collective rights and safety that Rana Plaza had so tragically illustrated. The simplification of trade union registration requirements, which led to a significant increase in registered garment sector unions in the years following the amendment, was intended in part to create the worker organization through which workers could exercise their right to participate in safety management and their right to refuse unsafe work.

The evaluation of the 2013 amendments by the ILO, the Committee of Experts on the Application of Conventions and Recommendations, and independent academic researchers has been generally positive about the direction of the reforms but critical of their implementation. The building inspection requirement, though important in principle, has been undermined by the capacity limitations of the relevant authorities and by the political influence of building owners and factory operators who have resisted full compliance. The increased penalties for safety violations, while representing a formal improvement, have not been consistently applied, and the deterrent effect of the enforcement system remains weak.

### 33.3 The 2018 and 2022 Amendments: Incremental Progress and Regressive Steps

The Bangladesh Labour (Amendment) Act 2018 and the subsequent 2022 amendment made further changes to the OSH framework, some progressive and some regressive. Among the progressive changes of the 2018 amendment was an extension of the scope of the Act to cover additional categories of workers, including some previously excluded from its coverage, and improvements to the maternity protection provisions. But the provisions specifically addressed to OSH were less comprehensive than the post-Rana Plaza moment seemed to demand.

The 2022 amendment, as noted above, made regressive changes to the Safety Committee provisions, reducing worker representatives' rights on these bodies. This regressive step reflected the political influence of the BGMEA and other employer associations under the late Hasina government, which as Part Four has described was characterized by a close and often corrupting relationship between the government and the garment industry leadership. The revision of Safety Committee provisions in a direction that favored employer control was part of a broader pattern of regulatory rollback that characterized the final years of the Hasina government's engagement with labour law.

### 33.4 The Bangladesh Labour (Amendment) Ordinance 2025: A New Beginning

The most significant legislative development in Bangladesh's OSH law since the 2013 amendments is the Bangladesh Labour (Amendment) Ordinance 2025, promulgated by the President on 17 November 2025, following the recommendations of the Labour Reform Commission established by the interim government that came to power after the July Revolution of 2024. This Ordinance, which was analyzed in relation to collective labour rights in Part Four, also contains several important provisions specifically addressed to occupational safety and health.

The 2025 Ordinance restores and strengthens the worker participation provisions on Safety Committees that were eroded by the 2022 amendment, reestablishing the principle that workers and their representatives should have an equal role with management in the governance of workplace safety. The Ordinance also strengthens the prohibition on dismissal or disciplinary action against workers who refuse to perform work that they reasonably believe poses imminent and serious danger to their life or health, a provision that gives legal expression to one of the most fundamental rights in ILO Convention No. 155.

The Ordinance's provisions on OSH are importantly connected to its provisions on trade union rights, analyzed in Part Four. The reduction of the membership threshold for union formation, which will make it easier for workers in small and medium enterprises to form unions, has indirect but significant implications for OSH, because trade union organization is consistently associated with better safety outcomes. Workers who have effective collective representation are better able to exercise their right to refuse unsafe work, to raise safety concerns without fear of retaliation, and to participate meaningfully in the Safety Committees established by the Act.

The 2025 Ordinance was followed within days by the historic ratification of ILO Conventions 155, 187, and 190 on 20 November 2025, creating new international obligations that Bangladesh must now implement through domestic law and institutional reform. The combination of the 2025 Ordinance and the Convention ratifications represents the most significant commitment to

OSH reform that Bangladesh has ever undertaken, and it creates both an obligation and an opportunity for the comprehensive reform of the OSH framework that this Part recommends.

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## CHAPTER THIRTY-FOUR: THE CONSTITUTIONAL DIMENSIONS OF THE RIGHT TO SAFE WORK IN BANGLADESH

### 34.1 The Constitutional Framework: Fundamental Rights, Directive Principles, and the Right to Life

The Constitution of Bangladesh 1972 does not explicitly recognize a right to occupational safety and health as a fundamental right in Part III. The fundamental rights guaranteed in Part III include the right to life and personal liberty (Article 32), the right to equality (Article 27), freedom of thought and conscience (Article 39), freedom of assembly and association (Article 38), and several others, but no explicit right to safe working conditions. The Fundamental Principles of State Policy in Part II, which are not directly enforceable but are intended to guide the state in the exercise of its powers, include several provisions relevant to labour conditions, including Article 15, which declares that it is a fundamental responsibility of the state to secure for all citizens the provision of the basic necessities of life, and Article 20, which declares that work is a right and duty of every citizen.

The absence of an explicit constitutional right to safe work does not, however, mean that the Constitution is irrelevant to OSH law. As in several other constitutional systems, the Supreme Court of Bangladesh has developed a substantial body of doctrine under which the right to life in Article 32 is interpreted expansively to include the right to live with dignity and the right to a livelihood, and under which threats to occupational safety and health are treated as potential violations of this expansive right to life.

The High Court Division of the Supreme Court has, in a series of decisions, established the principle that the right to life in Article 32 is not merely a right against deprivation of physical life but a right to live with dignity, which encompasses the conditions necessary for a fully human life. In Dr Mohiuddin Farooque v. Bangladesh (1997), the High Court Division interpreted the right to life to include the right to a healthy environment, drawing on the principle that environmental degradation that threatens human health constitutes a violation of the constitutional right to life. This environmental jurisprudence is directly relevant to OSH, because the principle that the right to life requires protection from environmental health hazards applies equally to the occupational environment.

The High Court Division's approach to occupational safety in the specific context of factory conditions has been less extensively developed, but there are several important decisions in which the court has used the constitutional right to life to ground an obligation on the state to enforce OSH standards. In a series of public interest litigation cases filed after major industrial accidents, the court has issued directions to the government and to DIFE to take specific measures to enforce safety standards and to investigate failures of enforcement. These decisions, while important, have been inconsistently followed up, and the court's ability to enforce its own

orders in the field of labour regulation has been limited by the persistent capacity and resource constraints of the executive branch.

## 34.2 The Judicial Interpretation of Occupational Safety Rights: Key Cases

The jurisprudence of the High Court Division on occupational safety has developed primarily through public interest litigation filed by civil society organizations, trade union federations, and public-spirited lawyers in the wake of major industrial disasters. The pattern of this litigation reflects the structural features of Bangladesh's legal system: the formal legal framework provides robust individual rights of action for injured workers, but the practical barriers to individual litigation, including cost, delay, and evidentiary difficulties, mean that individual workers rarely succeed in using these mechanisms. Public interest litigation, filed by organizations with the resources and expertise to pursue complex cases, has been the primary mechanism through which the constitutional dimensions of occupational safety have been litigated.

The cases that have most directly engaged the constitutional dimensions of OSH rights include challenges to the adequacy of the government's regulatory response to specific disasters and challenges to the legality of specific regulatory decisions, such as the granting of building permits for structures subsequently found to be structurally defective. The High Court Division has in several of these cases ordered the government to take specific remedial action, and has expressed strong judicial views about the fundamental importance of the right to safe work.

The Supreme Court's engagement with the Rana Plaza case has been particularly significant. Public interest litigation filed after the disaster led to a series of orders by the High Court Division requiring the government to take measures to ensure compensation for victims, to strengthen the factory inspection system, and to prosecute those responsible for the building's construction and operation in violation of safety standards. The court's orders have been partially complied with, but the prosecution of Sohel Rana and others proceeded at a pace that suggested that the judicial orders were insufficient, in themselves, to overcome the political obstacles to accountability.

## 34.3 Comparative Constitutional Approaches to OSH Rights

A comparative constitutional analysis reveals that Bangladesh is not alone in lacking an explicit constitutional right to occupational safety, but that there is a global trend toward constitutional recognition of this right, either explicitly or through judicial interpretation of the right to life and dignity. The South African Constitution of 1996 is the most explicit example: Section 23 guarantees the right to fair labour practices, and the Constitutional Court has interpreted this to include a right to safe working conditions. The Indian Supreme Court's expansive interpretation of the right to life in Article 21 of the Indian Constitution to include the right to livelihood and to safe working conditions has been highly influential in the South Asian context, and has been cited approvingly by the Bangladesh courts.

The German Federal Constitutional Court's jurisprudence on Berufsfreiheit, the constitutional freedom of occupation, provides another comparative reference point. The German court has held that the state has an obligation to protect workers from hazards to their health in the course

of employment, and that this obligation flows from the constitutional right to dignity in Article 1 in conjunction with the right to life and physical integrity in Article 2. The German court's analysis has been influential in the development of European OSH law and in the academic literature on the constitutional foundations of occupational safety rights.

The most recent development in comparative constitutional OSH jurisprudence is the recognition by several constitutional courts and by the Inter-American Court of Human Rights that the right to a safe working environment has a collective as well as an individual dimension: that workers have not merely individual rights to protection from specific hazards, but a collective right to participate in the governance of the conditions under which they work. This collective dimension of OSH rights, which connects directly to the analysis of collective labour rights in Part Four, is increasingly recognized in international human rights law and in the jurisprudence of international and regional human rights bodies, and it provides an important foundation for the reform proposals advanced in this Part.

## 34.4 Toward Constitutional Recognition: The Reform Agenda for Constitutional OSH Rights

The analysis of Bangladesh's constitutional framework and its judicial interpretation suggests that the existing Constitution provides an adequate if imperfect foundation for OSH rights through the expansive interpretation of the right to life. But the absence of explicit constitutional recognition creates uncertainty, limits the scope of judicial remedies, and fails to express in the clearest terms Bangladesh's commitment to the equal dignity and physical safety of all working people.

The reform agenda proposed in this Part therefore includes a recommendation for constitutional amendment to explicitly recognize the right to safe and healthy working conditions as a fundamental right enforceable in the courts. Such an amendment would express Bangladesh's commitment to the ILO's newly fundamental OSH conventions in constitutional terms, would provide a stronger foundation for judicial review of inadequate regulatory responses to workplace hazards, and would signal clearly to employers, workers, and the international community that Bangladesh treats the right to safe work as a non-negotiable element of the constitutional order.

The specific form of such a constitutional recognition is a matter for democratic deliberation, but comparative experience suggests that an appropriate formulation would recognize both the individual and collective dimensions of the right, including the right to participate in the governance of occupational safety, the right to refuse unsafe work without fear of retaliation, and the state's positive obligation to create and maintain an effective system for the prevention of occupational injury and disease. The recognition of the right in Part III of the Constitution, as a directly enforceable fundamental right, rather than merely in Part II as a directive principle, would give the right the legal force and the judicial backing that it requires.

# CHAPTER THIRTY-FIVE: THE INSTITUTIONAL ARCHITECTURE OF OSH GOVERNANCE: DIFE, TRIPARTITE BODIES, AND REFORM IMPERATIVES

## 35.1 The Department of Inspection for Factories and Establishments: Capacity, Corruption, and the Crisis of Enforcement

The Department of Inspection for Factories and Establishments is the primary state institution responsible for the enforcement of occupational safety and health standards across all industries in Bangladesh. DIFE operates under the Ministry of Labour and Employment and has offices in all major industrial areas. Its mandate under the Bangladesh Labour Act covers the inspection of factories, compliance with safety and health standards, investigation of workplace accidents, and the prosecution of employers for safety violations.

The fundamental problem of DIFE is not primarily a problem of law or of policy; it is a problem of institutional capacity. As of 2024, DIFE employed approximately 900 inspectors for a country with more than 100,000 registered factories and an even larger number of unregistered workplaces. The inspector-to-establishment ratio is among the worst in Asia, and routine coverage of most factories is simply impossible. The ILO's recommendation of one inspector for every 10,000 workers is far from being achieved; DIFE's current capacity translates to approximately one inspector per 90,000 workers.

The qualitative inadequacy of the inspection system is as serious as the quantitative shortfall. Many DIFE inspectors lack specialist technical qualifications in structural engineering, electrical safety, fire prevention, chemical hazard assessment, and other technical fields that are essential for effective factory safety inspection. The training program for inspectors, while improved with ILO support in recent years, remains inadequate to equip inspectors with the expertise needed to identify systemic safety management failures as opposed to specific technical violations.

The corruption dimension of DIFE's enforcement failures has been extensively documented and is widely acknowledged within the system itself. The pattern of corruption in factory inspection typically involves factory owners making payments to inspectors to overlook violations or to provide advance warning of inspections, giving factory management time to temporarily address the most obvious deficiencies. This pattern of corruption undermines not merely the detection of violations but the deterrent function of the inspection system as a whole, because factory owners who know that violations can be managed through payments have little incentive to invest in genuine compliance.

The structural causes of corruption in the inspection system include low inspector salaries, which create economic pressure to supplement income through unofficial payments; the discretionary character of inspection, which creates opportunities for extracting payments in exchange for favorable treatment; and the absence of effective internal accountability mechanisms within DIFE. Addressing these structural causes requires not merely anti-corruption training, which has limited effectiveness, but fundamental reforms to the inspection system's institutional design, including competitive salaries, transparent inspection protocols, random assignment of inspection responsibilities, and effective internal and external oversight of inspection activities.

The political dimension of DIFE's enforcement capacity is also important. DIFE operates under the political authority of the Ministry of Labour and Employment, whose leadership is subject to the political calculations of the government of the day. When the government is closely connected to the garment industry leadership, as was consistently the case under the Hasina government from 2009 to 2024, the ministry's political leadership may exert pressure on DIFE to maintain enforcement at a level that does not threaten the profitability or political interests of major industrial employers. Insulating the inspection function from direct political control, through the creation of an independent regulatory authority with a statutory mandate and secure tenure for its leadership, is a structural reform that the analysis in this Part identifies as essential.

### 35.2 The DIFE Modernization Program: Digital Systems and Their Limits

Following the Rana Plaza disaster, DIFE undertook a significant modernization program with ILO technical support, including the development of a digital inspection management system, the introduction of standardized inspection checklists, and the development of public disclosure mechanisms for inspection results. The digital system, launched in 2020, was intended to create a more systematic, transparent, and corruption-resistant inspection process by requiring inspectors to record their findings in a standardized electronic format and by making inspection results available online.

These modernization initiatives represent genuine progress, and the development of a digital infrastructure for inspection management is a necessary prerequisite for the development of a more effective OSH regulatory system. But the digital system cannot, by itself, resolve the fundamental capacity and corruption problems that afflict DIFE's enforcement function. An inspector with inadequate technical training who enters the results of a superficial inspection into a digital system produces digitized inadequacy, not genuine enforcement. And a corrupt inspector who accepts payment to overlook violations and records no violations in the digital system produces digitized impunity, not accountability.

The development of an effective digital inspection system requires not merely the technology but the institutional culture and the human capacity to use it effectively. The training investment required to enable DIFE inspectors to make full use of the digital system's capabilities, and to conduct the kind of systematic, evidence-based, technically sophisticated inspections that the system is designed to support, is substantial and has been only partially made.

### 35.3 The Tripartite Framework: National Tripartite Consultative Council and OSH Governance

The National Tripartite Consultative Council, established following the Rana Plaza disaster, provides a platform for dialogue between the government, employer organizations, and trade union federations on a range of labour policy questions, including OSH. The TCC has met regularly since its establishment and has provided a forum for the development of the National OSH Policy and the National Plan of Action on OSH.

The tripartite model of OSH governance reflects the principle, embedded in ILO Convention No. 155 and elaborated in Convention No. 187, that the development and implementation of national

OSH frameworks should involve the participation of both employers and workers through their respective organizations. This principle is philosophically grounded in the republican ideal of non-domination: workers who participate in the governance of the conditions under which they work are less subject to the arbitrary will of employers and more genuinely free than workers whose safety is entirely dependent on the benevolence of employers or the efficiency of a distant state bureaucracy.

But the tripartite framework in Bangladesh, as in many developing countries, operates under conditions of profound inequality between the parties. Employer organizations, particularly the BGMEA, are well resourced, politically connected, and skilled at the technical aspects of policy negotiation. Worker organizations, while more numerous than before Rana Plaza, remain fragmented, underresourced, and often operating under conditions of political pressure and anti-union discrimination. The state, caught between its development objectives and its obligations to workers, has too often facilitated outcomes that reflect the structural power of employers rather than the genuine interests of workers.

The reform of the tripartite framework to address these power imbalances is a priority for the OSH reform agenda. This requires investment in the capacity of trade union federations to participate effectively in tripartite processes, including legal and technical training for union representatives, financial support for union participation in technical bodies, and structural reforms to the TCC to give worker representatives a more effective voice in decision-making.

### 35.4 The EPZ OSH Regime: Exceptional Jurisdiction and Reform Imperatives

The occupational safety and health of workers in Export Processing Zones presents a distinct set of regulatory challenges that merit specific analysis. As noted in Part Four, the EPZs are governed by a separate legal framework, originally the EPZ Workers' Associations and Industrial Relations Act 2004, subsequently replaced by the Bangladesh EPZ Labour Act 2019. This separate framework has historically excluded the jurisdiction of DIFE over EPZ factories, which are instead supervised by the Bangladesh Export Processing Zone Authority's own enforcement apparatus.

The exclusion of DIFE jurisdiction from the EPZs creates a structural gap in the national OSH framework. The BEPZA's enforcement apparatus, while resourced more generously than DIFE, is not subject to the same legal framework or the same degree of public accountability, and there are persistent concerns about the independence of BEPZA's enforcement function from the commercial interests of EPZ investors. The ILO-BEPZA Two-Year Action Plan of May 2025, analyzed in Part Four, included commitments to strengthen OSH standards and enforcement in the EPZs, but the fundamental problem of the separate regulatory jurisdiction remains unresolved.

The reform of the EPZ OSH framework requires, at a minimum, the extension of DIFE's inspection jurisdiction to cover EPZ factories, the application of the same OSH standards that apply in non-EPZ sectors, and the integration of the EPZ workforce into the national tripartite framework for OSH governance. The 2025 Ordinance's provisions on EPZ reform, analyzed in

Part Four, represent important progress in this direction but do not fully resolve the question of OSH jurisdiction.

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## CHAPTER THIRTY-SIX: SECTORAL DIMENSIONS OF OSH IN BANGLADESH: BEYOND THE GARMENT SECTOR

### 36.1 The Tyranny of Garment-Centrism in Bangladesh's OSH Discourse

The overwhelming attention given to the garment sector in Bangladesh's OSH discourse, while entirely understandable given the scale of the Rana Plaza disaster and the global visibility of the garment industry, has had the perverse effect of directing regulatory resources and reform attention disproportionately toward a single sector while leaving many other equally or more hazardous industries relatively neglected. A comprehensive OSH framework for Bangladesh must address the full range of industrial hazards that workers face across all sectors of the economy, including construction, brick kilns, informal manufacturing, agriculture, fisheries, and domestic work.

The construction sector is, by most accounts, among the most dangerous industries in Bangladesh. Construction work involves exposure to falls from height, collapsing structures, moving machinery, electrical hazards, and chemical exposures from building materials. Construction workers are predominantly male, often migrant workers from rural areas, typically employed on informal arrangements without written contracts, and almost entirely without trade union representation or access to workers' compensation when injured. The Bangladesh Labour Act's safety provisions apply formally to construction establishments, but enforcement in the construction sector is essentially non-existent in the context of the small and medium construction projects that account for the majority of construction work and the majority of construction accidents.

The brick kiln industry employs hundreds of thousands of workers under conditions that present extreme occupational health risks. Workers are exposed to severe heat, smoke, and coal dust during the firing process, creating risks of heat stress, respiratory disease, and occupational cancer. Many brick kiln workers are effectively bonded laborers, trapped in debt arrangements with kiln owners that prevent them from leaving their employment. The seasonally isolated locations of many brick kilns place them effectively beyond the reach of the inspection system. The reformatory work of organizations such as the Bangladesh Institute of Labour Studies has documented the occupational health conditions in the brick kiln sector extensively, but regulatory response has been minimal.

The shipbreaking industry, concentrated on the beaches of Sitakund near Chittagong, presents perhaps the most extreme occupational hazards of any industry in Bangladesh. Workers manually dismantle large ocean-going vessels on the beach, without protective equipment and in conditions that expose them to asbestos, heavy metals, explosive fumes, and other toxic materials. The accident rate in the shipbreaking industry is among the highest in the world, and occupational disease, particularly asbestos-related disease and lead poisoning, kills workers years

after their exposure. The industry operates under a separate regulatory framework, the Ship Breaking and Ship Recycling Rules 2011, but enforcement has been weak and the conditions of workers have been the subject of sustained campaigns by international human rights organizations and environmental groups.

The agriculture sector, which employs approximately 40 percent of Bangladesh's workforce, presents a different set of OSH challenges including exposure to pesticides, heat stress, flooding and drowning risks, and musculoskeletal disorders from manual labor. Agricultural workers are entirely outside the formal protection of the Bangladesh Labour Act, which excludes agricultural establishments from its scope. This exclusion, inherited from the colonial period, reflects a profound inconsistency in the legal framework's treatment of different categories of workers, and it leaves the largest single group of workers in Bangladesh without any formal OSH protection under the national law.

The domestic work sector, which employs millions of mostly women workers in private households, presents yet another category of OSH risk that is entirely invisible in the formal regulatory framework. Domestic workers face risks of occupational injury from kitchen accidents, falls, and cleaning-related hazards, as well as risks of sexual violence and physical abuse that the ratification of ILO Convention No. 190 now requires to be addressed. Bangladesh has not yet ratified ILO Convention No. 189 on Decent Work for Domestic Workers, and the comprehensive regulatory framework for domestic workers' safety and rights that this Convention requires remains to be developed.

### 36.2 The Informal Economy and OSH: The Problem of Regulatory Reach

The informal economy, which by most estimates accounts for more than 85 percent of total employment in Bangladesh, presents the most fundamental challenge to the application of any formal OSH regulatory framework. The Bangladesh Labour Act applies only to "establishments" as defined in the Act, which excludes most informal sector enterprises by definition or by the practical impossibility of enforcement. The informal economy encompasses street vendors, home-based workers, day laborers, self-employed artisans, rickshaw pullers, and the many forms of marginal work that sustain the majority of Bangladesh's working population.

The OSH risks faced by informal economy workers are in many cases more severe than those faced by workers in the formal sector, because informal workers lack the minimal protection that formal sector standards, however inadequately enforced, provide. Home-based garment workers, who constitute a significant share of Bangladesh's manufacturing labor force, work in confined spaces, often with inadequate lighting and ventilation, using industrial machinery in domestic settings that were not designed for industrial use. The chemical hazards from garment dyeing and finishing processes, the ergonomic hazards from repetitive cutting and sewing operations, and the fire risks from using flammable materials in domestic spaces without fire safety measures are all serious and largely unaddressed.

The extension of OSH protection to informal economy workers is one of the most challenging problems in labour law in developing countries, and there is no simple solution. Pure compliance-based regulatory approaches, which rely on inspections of establishments and

penalties for non-compliance, cannot reach workers who are not employed in identifiable establishments. Alternative approaches include the development of voluntary or quasi-voluntary standards for supply chains that include informal workers, the use of social protection mechanisms to provide health care and compensation for occupationally injured informal workers, and the development of community-based OSH education programs that reach workers in informal settings.

The ILO's 2025 World Safety and Health at Work Day theme, which emphasized the importance of inclusive approaches to OSH that reach informal and migrant workers, reflects growing international recognition of this challenge. For Bangladesh, developing an approach to OSH that addresses the informal economy is not merely a technical regulatory question but a fundamental question of social justice: the decision about whether to protect only those workers who happen to work in formal establishments or to extend genuine OSH protection to all working people is, ultimately, a decision about which workers count as full members of the human community deserving of legal protection.

### 36.3 Women Workers, Gender, and OSH: The ILO Convention 190 Imperative

The particular OSH experiences of women workers in Bangladesh deserve specific analysis, both because women constitute the majority of workers in the garment sector, Bangladesh's largest formal industry, and because women workers face OSH hazards that are specific to or disproportionately affect women, including sexual harassment and gender-based violence, inadequate sanitation facilities, discriminatory restrictions on work during menstruation and pregnancy, and the psychosocial hazards of working in environments characterized by gender-based power imbalances.

The ratification of ILO Convention No. 190 on Violence and Harassment in November 2025 creates a new legal framework for addressing the gender-specific OSH risks faced by women workers in Bangladesh. Convention No. 190 defines "violence and harassment" in the world of work broadly to include physical, psychological, and sexual violence and harassment, and it requires member states to adopt an inclusive, integrated, and gender-responsive approach to preventing and addressing violence and harassment, including in supply chains.

The significance of Convention No. 190 for Bangladesh is substantial. Sexual harassment of women workers in the garment sector has been extensively documented by organizations including the Bangladesh Institute of Labour Studies, Human Rights Watch, and the Solidarity Center. A 2019 survey found that more than 80 percent of women garment workers reported experiencing some form of sexual harassment at work. The combination of a predominantly female workforce, male supervisory hierarchies, power imbalances resulting from the absence of effective trade union protection, and the physical and temporal pressures of production create conditions in which sexual harassment is structurally facilitated and structurally normalized.

The existing legal framework on sexual harassment in Bangladesh is inadequate to address this reality. The Supreme Court's 2009 guidelines on sexual harassment in educational institutions and workplaces, issued in the case of Bangladesh National Women Lawyers Association v. Government of Bangladesh, established some basic principles and required the establishment of

harassment complaint committees in workplaces, but the guidelines have been inconsistently implemented and lack the statutory force needed to ensure universal compliance. The Labour Act provisions on workplace harassment are limited and have been rarely enforced.

Convention No. 190 requires Bangladesh to go significantly beyond the 2009 guidelines. It requires the adoption of legislation that explicitly prohibits violence and harassment in the world of work, including in all sectors, occupations, and work arrangements; the establishment of effective, accessible, and gender-responsive complaint and dispute resolution mechanisms; the provision of support services for victims; and the integration of violence and harassment prevention into national OSH systems. Meeting these obligations will require substantial legislative reform, institutional development, and a cultural transformation in attitudes toward women workers' safety and dignity.

The February 2026 amendments to the Bangladesh Labour Act, which were under discussion at the time of this writing according to available sources, are expected to include provisions specifically addressing workplace harassment in compliance with Convention No. 190. The development of these provisions should be guided by the principles of gender-responsiveness, accessibility, and effectiveness that the Convention requires, and should involve meaningful consultation with women workers and their organizations.

### 36.4 Migrant Workers and OSH: The Invisible Workforce

Bangladesh is one of the world's largest exporters of migrant workers, with an estimated ten million Bangladeshi workers employed abroad, primarily in the Gulf states, Malaysia, and other South and Southeast Asian countries. The OSH conditions faced by Bangladeshi migrant workers abroad are a distinct but important dimension of Bangladesh's OSH challenge: thousands of Bangladeshi migrant workers are killed or seriously injured in workplace accidents in destination countries every year, and many more suffer from occupational diseases acquired in the course of their employment abroad.

The regulation of the safety of Bangladeshi migrant workers falls primarily under the Overseas Employment and Migrants Act 2013 and is the responsibility of the Bureau of Manpower, Employment and Training. But the legal framework for the protection of migrant workers' OSH rights is complex and incomplete, because it involves the laws of both the sending and receiving countries, and because the power relations between migrant workers and their employers are typically even more unequal than those between domestic workers and domestic employers.

The deaths of Bangladeshi workers in the construction sites of Qatar during preparations for the FIFA World Cup attracted significant international attention in the years leading up to the 2022 tournament, and generated important reporting on the structural factors that produced these deaths: the kafala sponsorship system that bound workers to specific employers and prevented them from leaving unsafe work, the extreme heat that characterized work conditions in the Gulf summer, the absence of effective enforcement of health and safety standards, and the failure of the Bangladeshi state to adequately protect its citizens working abroad. The systematic analysis of these factors, and of the legal and institutional reforms needed to address them, falls outside

the scope of this Part, which focuses primarily on domestic OSH law, but deserves recognition as an urgent dimension of the broader challenge of protecting Bangladesh's workers.

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## CHAPTER THIRTY-SEVEN: OSH, CLIMATE CHANGE, AND THE EMERGING FRONTIER OF ENVIRONMENTAL LABOUR LAW

### 37.1 Climate Change as an Occupational Safety and Health Crisis

The relationship between climate change and occupational safety and health is one of the most important emerging areas of OSH law and policy, and it has particular significance for Bangladesh, which is among the countries most severely affected by climate change and which has a large proportion of its workforce engaged in outdoor and climate-sensitive occupations.

The ILO's 2024 report on working on a warming planet estimated that more than 2.4 billion workers worldwide are exposed to excessive heat at work, and that heat stress already causes approximately 22.85 million workplace accidents and 18,970 deaths annually. For Bangladesh, where outdoor workers including agricultural workers, construction workers, and day laborers routinely work in temperatures and humidity levels that exceed safe thresholds, heat stress is already a significant and growing occupational health hazard. The Bangladesh Institute of Labour Studies has documented cases of workers collapsing and dying from heat stroke in the brick kiln sector, the construction sector, and in agricultural work, but these deaths are rarely recorded as occupational fatalities and are invisible in the national OSH statistics.

The legal framework for heat stress regulation in Bangladesh is essentially non-existent. The Bangladesh Labour Act contains no specific provisions on heat stress or thermal comfort in outdoor workplaces, and the technical guidance available to employers on managing heat risk is minimal. The development of a heat stress regulatory framework, including threshold temperatures above which specific protective measures are required, requirements for rest periods and hydration facilities, and enhanced medical surveillance for workers in heat-exposed occupations, is an increasingly urgent OSH reform priority given the trajectory of climate change in Bangladesh.

The broader relationship between climate change and OSH encompasses not only heat stress but also flooding and extreme weather events that affect outdoor workers, air quality deterioration from increased wildfire smoke and pollution, the spread of infectious diseases into new geographical areas, and the displacement of workers from climate-affected industries into potentially more hazardous occupations. Each of these dimensions of climate-OSH interaction requires regulatory attention, but the development of a comprehensive climate-sensitive OSH framework is a relatively new challenge that has not been adequately addressed in existing Bangladeshi law or policy.

The concept of a "just transition" in the context of climate change has become increasingly prominent in international labour policy discourse, and it has important implications for Bangladesh's OSH framework. The just transition framework, developed by the ILO and adopted

by the Paris Agreement, holds that the transition to a low-carbon economy must be managed in a way that protects workers from the costs of industrial transformation, including the risks of job displacement, the creation of new occupational hazards in emerging green industries, and the exacerbation of existing occupational health disparities. For Bangladesh, the just transition framework is particularly relevant to the garment sector, which faces significant challenges from the climate-related transformation of global textile supply chains, and to the coastal fishing and agricultural sectors, which are directly threatened by sea level rise and salinity intrusion.

### 37.2 The ILO Convention 187 Framework: Building a National OSH System

ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health requires member states to build a national OSH system that includes a national policy, a national system, and a national programme. Bangladesh's ratification of this Convention in November 2025 creates specific obligations to develop each of these elements in a comprehensive and coherent way.

The national policy element requires Bangladesh to formulate, implement, and periodically review a coherent policy on OSH, through consultation with the most representative organizations of employers and workers. Bangladesh's existing National OSH Policy, developed in 2013 and updated subsequently, provides a foundation for this element, but the policy requires significant strengthening to address the full range of hazards facing workers across all sectors, including the newly ratified requirements on climate-related hazards, violence and harassment, and the informal economy.

The national system element requires the establishment or maintenance of institutions and mechanisms for the collection and analysis of data on occupational injuries and diseases, the development and implementation of OSH standards and regulations, the operation of an effective system of labour inspection, the provision of OSH education and training, and the development of occupational health services. The current national system in Bangladesh has significant gaps in each of these areas, as the analysis in this Part has demonstrated.

The national programme element requires the setting of measurable targets for OSH improvement and a framework for monitoring progress toward these targets. The development of a national OSH programme with specific, measurable, time-bound targets, modelled on the approach of Convention No. 187, is a central recommendation of the reform agenda proposed in this Part.

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## CHAPTER THIRTY-EIGHT: THE COMPENSATION FRAMEWORK: WORKERS' COMPENSATION, TORT LIABILITY, AND THE ADEQUACY OF REMEDIES

### 38.1 The Workers' Compensation Framework under the Bangladesh Labour Act

The compensation framework for workplace injuries under the Bangladesh Labour Act has its origins in the colonial Workmen's Compensation Act of 1923, which was one of the earliest

social protection measures enacted in British India. The current framework, contained in Chapter XII of the BLA and Schedule V, provides for employer liability to compensate workers for injuries sustained "by accident arising out of and in the course of employment," a formulation that closely tracks the original colonial language.

The principal deficiencies of the current compensation framework are: inadequate amounts, inaccessible procedures, no coverage for occupational diseases, and no compulsory insurance requirement. Each of these deficiencies warrants detailed analysis.

The inadequacy of compensation amounts is perhaps the most fundamental problem. The BLA specifies compensation for fatal accidents as a lump sum calculated by multiplying a fixed proportion of the worker's monthly wages by a multiplier specified in Schedule V, with additional amounts for dependent children. The resulting amounts are a small fraction of the full economic value of a life or of the full economic loss sustained by the worker's family. For a young garment worker earning the minimum wage at the time of writing, the maximum compensation for fatal injury under the BLA is far less than what a court applying tort law principles of full compensation would award. The systematic undercompensation of industrial death and injury is not merely an economic injustice; it is a signal to employers that human life and health are cheap, and that the costs of OSH non-compliance are readily absorbed.

The inaccessibility of the compensation procedure is a further barrier. Workers or their dependents who wish to claim compensation under the BLA must file a complaint with the Labour Court, and the process involves legal proceedings that are slow, expensive, and practically inaccessible to most workers, particularly those in rural areas and the informal economy. The absence of effective legal aid for compensation claimants means that many workers who are entitled to compensation never receive it, or receive less than their full entitlement because they have been unable to negotiate effectively with their employer or to present their case effectively to the Labour Court.

The exclusion of occupational diseases from the compensation framework is a major gap that exposes millions of workers to uncompensated harm. Occupational diseases, including the respiratory diseases associated with garment sector dust exposure, the hearing loss associated with high-noise industrial environments, the musculoskeletal disorders associated with repetitive manual labor, and the cancers associated with chemical and asbestos exposure, affect far more workers than acute workplace accidents. But proving causation for occupational diseases is technically complex, the conditions typically manifest years after the relevant exposure, and the legal framework provides no clear mechanism for compensation of occupationally diseased workers who cannot establish a specific accident.

The absence of compulsory employer liability insurance is a critical structural deficiency. When an employer is financially unable or unwilling to pay compensation for a workplace accident, the worker has no effective remedy because there is no insurance fund from which compensation can be drawn. The establishment of a compulsory workers' compensation insurance system, in which all employers are required to maintain adequate insurance cover, is a standard feature of OSH frameworks in comparable jurisdictions and is urgently needed in Bangladesh.

## 38.2 Tort Liability and Its Limits as an OSH Mechanism

In principle, the common law of tort provides an alternative or supplementary mechanism for workers to claim compensation for workplace injuries, through actions in negligence, breach of statutory duty, or nuisance. Bangladesh, as a common law jurisdiction, has inherited this framework from colonial law, and the courts have recognized the theoretical availability of tort claims by workers against negligent employers.

In practice, however, tort law has been a minimal contributor to occupational safety in Bangladesh. The barriers to tort litigation, including cost, delay, the difficulty of proving negligence in complex industrial accident cases, and the power imbalance between individual workers and corporate employers, mean that very few workplace accident cases are successfully litigated in tort. The experience of the Rana Plaza litigation is instructive: more than a decade after the disaster, the civil liability of the factory owners and international brands involved has not been definitively established through the courts, and the compensation actually received by victims and their families has come primarily from voluntary trust fund contributions rather than from legally established liability.

The development of a framework for civil liability of international brands sourcing from Bangladesh for harms caused by OSH failures in their supply chains, modelled on the EU Corporate Sustainability Due Diligence Directive discussed in Part Four, would represent a significant improvement in the accountability framework. The CSDDD, adopted in 2024, requires EU companies to identify, prevent, and address OSH risks in their entire supply chains, with civil liability for failure to do so. As one of the most important garment supply chain countries for EU markets, Bangladesh and its workers would be significant beneficiaries of the effective implementation of this framework.

## 38.3 The Rana Plaza Compensation Trust: Lessons for a National System

The Rana Plaza Donors Trust Fund, established in 2014 with facilitation from the ILO, provides important lessons for the design of a national compensation framework that can respond effectively to major industrial disasters. The Trust Fund collected approximately $30 million in donations from international brands, the Bangladesh government, industry associations, and individual donors, and distributed these funds to the survivors and families of victims according to a formula developed by the ILO and independent actuaries.

The Trust Fund experience demonstrated both the potential and the limitations of voluntary, industry-funded compensation schemes. The potential: a substantial fund could be established and distributed in a relatively short period, providing critical support to workers and families who would otherwise have received nothing. The limitations: the voluntary character of the scheme meant that brands could and did refuse to contribute, including some of the largest brands identified as sourcing from Rana Plaza; the amount distributed, while substantial, was significantly less than the full actuarial compensation that the victims were entitled to; and the process of establishing the fund was time-consuming and contested, delaying compensation to victims who were in acute need.

The lessons of the Trust Fund experience, combined with the analysis of the inadequacies of the existing workers' compensation framework, point toward the need for a national industrial accident compensation fund, financed by compulsory employer contributions and administered by an independent body, that can provide prompt and adequate compensation to victims of workplace injuries and diseases without the delays and uncertainties of litigation or voluntary schemes. Several comparable jurisdictions in Asia, including Malaysia, South Korea, and more recently Vietnam, have developed national workers' compensation fund systems that provide a model for such reform in Bangladesh.

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## CHAPTER THIRTY-NINE: THE INTERNATIONAL ACCORD MODEL: BINDING PRIVATE GOVERNANCE AND ITS JURISPRUDENTIAL DIMENSIONS

### 39.1 Private Governance, Public Accountability, and the Legitimacy Question

The Bangladesh Accord and its successors represent one of the most significant experiments in private supply chain governance in the history of international labour law. The Accord's binding character, its worker rights provisions, its independent inspection mechanism, and its dispute resolution system distinguish it sharply from the voluntary corporate social responsibility initiatives that dominated global supply chain governance before Rana Plaza, and from the weaker voluntary approaches represented by the Alliance for Bangladesh Worker Safety.

The jurisprudential dimensions of the Accord model are significant and have been the subject of substantial academic debate. The Accord is, formally, a private agreement between commercial entities and international trade union federations. It derives its authority from contract law rather than from public law, and its enforcement mechanisms are those of private arbitration rather than state adjudication. Yet it has produced regulatory outcomes, the improvement of physical safety conditions in hundreds of factories, that the state regulatory system had failed to produce over decades.

This paradox of private governance as a more effective mechanism for realizing public regulatory goals than public regulation itself is not unique to Bangladesh or to the Accord, but it is particularly stark in the Bangladeshi context. It raises fundamental questions about the appropriate boundaries between public and private ordering in the governance of labour markets and supply chains, and about the conditions under which private governance can serve the interests of workers rather than those of the powerful parties who design and control it.

The academic analysis of the Accord from a public law perspective has identified several important legitimacy concerns. First, the Accord was negotiated primarily between brands and international trade union federations, with Bangladeshi workers and unions having a secondary role. The power asymmetry between international brands and local worker organizations in the governance of a program that is supposed to protect Bangladeshi workers is a structural feature that limits the Accord's democratic legitimacy. Second, the Accord's enforcement mechanisms, while more effective than the state system, are ultimately contingent on the continued participation of signatory brands, which creates a structural vulnerability: brands that are

dissatisfied with the Accord's requirements can exit the program, as several have done, reducing its coverage and its leverage.

Third, and perhaps most fundamentally, the Accord model depends on the availability of international brands with market power over Bangladeshi suppliers and with reputational vulnerability to consumer campaigns. This model works tolerably well in the garment sector, where international brands are visible to consumers and susceptible to reputational pressure. But it has limited applicability to other sectors, such as construction, agriculture, or the informal economy, where international brands are absent and where the mechanisms of transnational private governance cannot operate.

The appropriate response to these legitimacy concerns is not to abandon the Accord model but to strengthen it by increasing the participation of Bangladeshi workers and unions in its governance, by extending its scope to cover a broader range of OSH issues, by developing a more stable and democratic governance structure for the RSC, and by embedding the Accord's standards and inspection methodology in the national public law framework, so that the state inspection system is reinforcing rather than substituting for the Accord's mechanisms.

### 39.2 The International Accord and the EU Corporate Sustainability Due Diligence Directive

The adoption of the EU Corporate Sustainability Due Diligence Directive in 2024 represents the most significant development in supply chain accountability law in recent years, and it has profound implications for the governance of OSH conditions in Bangladesh's garment sector. The CSDDD requires EU companies with more than 1,000 employees and annual turnover above 450 million euros to identify, prevent, mitigate, and account for adverse impacts on human rights and the environment throughout their supply chains, including by their business partners and subsidiaries.

The CSDDD's requirements in relation to OSH are directly relevant to the conditions of Bangladeshi garment workers. The directive defines "adverse human rights impacts" to include violations of the right to safe and healthy working conditions, and it requires EU companies to conduct due diligence on OSH conditions in their supply chains, to develop and implement prevention and correction plans for identified violations, and to provide remediation for harm caused by inadequate due diligence.

The CSDDD creates a new form of legal accountability for EU brands sourcing from Bangladesh: if an EU brand fails to conduct adequate due diligence on OSH conditions in its Bangladeshi suppliers and a worker is killed or seriously injured in a factory supplying that brand, the brand may face civil liability in EU courts. This liability framework provides a powerful incentive for EU brands to ensure, through the Accord and through their own due diligence processes, that their Bangladeshi suppliers maintain adequate OSH standards.

The implementation of the CSDDD is expected to occur over a phased timeline, with the largest companies required to comply from 2027. Bangladesh needs to prepare for this transition by developing domestic OSH standards and enforcement mechanisms that are consistent with the

CSDDD's requirements, by supporting the strengthening of the RSC as a credible monitoring body, and by engaging with EU authorities and civil society organizations to ensure that the CSDDD's implementation supports rather than harms Bangladesh's workers and economy.

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## CHAPTER FORTY: ILO CONVENTION 155 AND THE ARCHITECTURE OF A NATIONAL OSH SYSTEM

### 40.1 Convention 155: Key Obligations and Their Implications for Bangladesh

ILO Convention No. 155 on Occupational Safety and Health, ratified by Bangladesh on 20 November 2025 as part of the historic triple ratification that also covered Conventions 187 and 190, establishes a comprehensive framework of obligations for the development and implementation of a national OSH policy and system. The ratification of this Convention, which was declared a fundamental convention by the International Labour Conference in 2022, represents Bangladesh's most significant OSH commitment since independence, and its implementation requires the comprehensive reform of Bangladesh's domestic OSH framework.

Convention 155 requires, in its core provisions, that Bangladesh formulate, implement, and periodically review a national OSH policy through consultation with the most representative organizations of employers and workers (Article 4). The policy must define the respective functions and responsibilities of public authorities, employers, workers, and others in relation to OSH, with due regard to the complementary character of these responsibilities. The policy must take into account the spheres of national competence, the major industrial sectors and their specific hazards, and the needs of special groups (Article 5).

The Convention's requirements for action at the level of the enterprise are equally specific. Article 16 requires that employers ensure, so far as is reasonably practicable, that workplaces, machinery, equipment, and processes under their control are safe and without risk to health; that chemical, physical, and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and that adequate protective clothing and protective equipment are provided to prevent risk to health where it has not been possible to eliminate risk by other means.

Article 13 provides that a worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice. This provision gives legal expression to the right to refuse unsafe work that was so catastrophically violated in the Rana Plaza disaster when workers were ordered to continue working in a structurally compromised building. The explicit incorporation of this right into the national OSH framework is one of the most important practical requirements of Bangladesh's Convention 155 ratification.

Article 19 requires that there be arrangements at the level of the undertaking under which workers and their representatives cooperate in the development, implementation, and review of

OSH measures, including through Safety Committees or other joint management-worker bodies. This provision reinforces the Safety Committee requirements of the Bangladesh Labour Act and requires that these committees be genuine mechanisms for worker participation in safety governance rather than tokenistic bodies controlled by management.

### 40.2 Convention 187 and the National Programme Approach

Convention No. 187 elaborates the requirements of Convention 155 by specifying that the national OSH system must include: a national policy and a national system for implementing the policy; competent authorities with responsibility for OSH, with adequate powers, financial and human resources, and technical capacity; a national system of inspection; provisions for worker participation; OSH education and training; and occupational health services (Article 4).

The Convention's innovative contribution is its requirement that member states develop and implement a national programme on OSH based on national profiles, defined as documents that set out the structure of the national OSH system, including legislation, institutions, enforcement, social dialogue, and available statistical data. The national profile provides the analytical foundation for the national programme, which should set specific objectives, priorities, and targets for the improvement of OSH performance.

Bangladesh has developed a national OSH profile with ILO support, and the National Plan of Action on OSH provides a basis for the national programme required by Convention 187. But these documents require significant updating to reflect the new obligations arising from the Convention ratification, the requirements of the 2025 Ordinance, and the latest data on occupational injury and disease in Bangladesh. The development of an updated national OSH programme, with specific, measurable targets for reducing occupational fatalities and injuries across all sectors, and with a clear monitoring and evaluation framework, is a priority implementation measure for the newly ratified Convention 187.

### 40.3 Convention 190 and the Violence and Harassment Framework

ILO Convention No. 190 on Violence and Harassment in the World of Work requires Bangladesh to adopt legislation that:

Defines and prohibits violence and harassment in the world of work, including gender-based violence and harassment (Article 7);

Requires employers to take appropriate steps, in proportion to their degree of control, to prevent and address violence and harassment, including by adopting and implementing a workplace violence and harassment policy, considering violence and harassment and associated psychosocial risks in the management of OSH, identifying hazards and assessing risks of violence and harassment, and taking measures to prevent and control these hazards and risks (Article 9);

Ensures that victims of violence and harassment in the world of work have effective and accessible means of reporting and dispute resolution, including public complaint mechanisms, dispute resolution mechanisms accessible at the workplace, and court procedures (Article 10);

Provides for appropriate remedies and support for victims, including safe reporting mechanisms, support services, health and safety protections, social security benefits, and employment-related remedies (Article 11).

The implementation of Convention 190 in Bangladesh requires the development of comprehensive legislation on workplace violence and harassment, going significantly beyond the existing 2009 Supreme Court guidelines. This legislation must cover all forms of violence and harassment, including physical, psychological, and sexual violence, in all employment and work arrangements, including the informal economy, domestic work, and supply chains. It must establish accessible complaint mechanisms at the workplace level, with effective protection against retaliation for complainants, and must provide effective remedies and support services for victims.

The development of this framework requires coordinated engagement across multiple institutions, including the Ministry of Labour and Employment, the Ministry of Women and Children Affairs, the law enforcement authorities, the judiciary, and civil society organizations working on gender and labour rights. The drafting of the implementing legislation, which is expected to be a priority of the post-2025 legislative reform program, should be guided by the principles of the Convention and by the extensive comparative experience of Convention 190 implementation in other jurisdictions, including its first implementing countries.

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## CHAPTER FORTY-ONE: OCCUPATIONAL HEALTH SERVICES, MEDICAL SURVEILLANCE, AND THE ROLE OF OCCUPATIONAL MEDICINE

### 41.1 The Occupational Health Services Gap in Bangladesh

Occupational health services, understood as the clinical, public health, and preventive medicine services that identify, prevent, and manage work-related health conditions, are the medical dimension of the OSH system and are an essential element of the framework required by ILO Convention No. 155 and Convention No. 187. In Bangladesh, occupational health services are at an extremely early stage of development, and the gap between what the ILO conventions require and what currently exists is substantial.

Occupational medicine as a clinical and academic specialty is effectively non-existent in Bangladesh. There are no accredited postgraduate training programs in occupational medicine, no specialist occupational medicine facilities in the public hospital system, and no systematic provision of pre-employment medical examinations, periodic health surveillance, or biological monitoring for workers in hazardous occupations. The few occupational health services that do exist are provided by private sector companies for their own workers, and they are concentrated in the largest and most internationally visible factories, primarily in the garment sector.

The consequences of this gap are severe and largely invisible in the official statistics. Occupational diseases, including the chronic respiratory diseases caused by dust exposure in the garment and construction sectors, the hearing loss caused by excessive noise in the textile and engineering industries, the musculoskeletal disorders caused by repetitive strain, and the occupational cancers caused by chemical and asbestos exposure, affect millions of Bangladeshi workers. But because occupational health services to diagnose these conditions do not exist outside a few large factories, most occupational diseases go undiagnosed, unrecorded, and uncompensated. Workers attribute their health problems to general illness rather than to their work, employers are not held accountable for the harm they cause, and the national OSH statistics dramatically underestimate the true burden of occupational disease.

The development of a national system of occupational health services is one of the most important and least discussed components of the OSH reform agenda. This requires the development of a cadre of trained occupational health professionals, including occupational physicians, occupational nurses, and industrial hygienists; the establishment of occupational health clinics in industrial areas, including mobile services that can reach workers in small and medium enterprises; the development of a national occupational disease surveillance system; and the integration of occupational health into the primary health care system so that community health workers can identify and refer potential cases of occupational disease.

## 41.2 The Role of Medical Surveillance in Preventive OSH

Medical surveillance, which involves the systematic health monitoring of workers exposed to specific occupational hazards, is a cornerstone of preventive OSH in jurisdictions with advanced occupational health systems. Medical surveillance serves multiple functions: it identifies individual workers who have developed early signs of occupational disease, enabling intervention before serious harm occurs; it detects patterns of health impairment that may indicate inadequate hazard controls; and it provides data for epidemiological analysis of the relationship between occupational exposures and health outcomes.

For Bangladesh, the priority candidates for mandatory medical surveillance programs include: garment workers exposed to cotton dust and other textile fibres, brick kiln workers exposed to silica and coal dust, shipbreaking workers exposed to asbestos and heavy metals, workers in chemical manufacturing and processing, and workers in industries with significant noise exposure. The implementation of mandatory medical surveillance for these high-risk groups is a requirement of Convention No. 155, which requires that workers be provided with appropriate health surveillance (Article 12(a)).

## 41.3 Occupational Health Research and the Evidence Base for OSH Policy

Effective OSH policy must be based on evidence: evidence about the nature and magnitude of occupational hazards, evidence about the effectiveness of different control measures, and evidence about the relationship between regulatory interventions and health outcomes. In Bangladesh, the evidence base for OSH policy is extremely limited, because systematic research on occupational health conditions has been minimal.

The few studies that have been conducted, mostly by researchers at Bangladeshi medical schools and public health institutes with support from international partners, have documented alarming rates of respiratory disease, musculoskeletal disorders, and dermatological conditions among garment workers; severe chemical and physical hazard exposures in the brick kiln, shipbreaking, and tannery sectors; and significant gaps in the monitoring and reporting of workplace accidents across all industries.

Building a robust evidence base for OSH policy requires sustained investment in occupational health research, including funding for the Bangladesh Institute of Labour Studies and other research institutions to conduct epidemiological studies on occupational disease burden, evaluation studies on the effectiveness of specific interventions, and implementation research on the practical challenges of OSH governance in different industrial settings. The development of partnerships between Bangladeshi research institutions and international occupational health research centers, building on existing collaborations with institutions in Australia, Scandinavia, and North America, can accelerate the development of this evidence base.

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## CHAPTER FORTY-TWO: THE OSH REFORM AGENDA: A COMPREHENSIVE FRAMEWORK FOR A SAFE AND HEALTHY BANGLADESH

### 42.1 The Philosophical Foundations of the Reform Agenda

The reform agenda proposed in this Part is grounded in the philosophical commitments articulated in Chapter Thirty and throughout this work. It rests on the conviction that the right to a safe and healthy working environment is a fundamental human right grounded in the equal dignity and humanity of every working person, not merely an instrumental interest that can be traded off against economic efficiency. It reflects the republican principle that workers must be protected not merely from specific foreseeable harms but from the arbitrary power of employers to impose hazardous conditions without accountability. And it expresses the Rawlsian commitment that the benefits of economic growth must be distributed in a way that protects the least advantaged, which in the context of OSH means prioritizing the protection of those workers who face the greatest hazards and have the fewest resources to protect themselves.

The reform agenda is also grounded in a realistic assessment of the political economy of OSH reform in Bangladesh. It recognizes that the political influence of employer interests, the capacity constraints of the regulatory system, the power imbalances that characterize the employment relationship in Bangladesh, and the pressures of international competitiveness all create powerful obstacles to genuine OSH reform. Overcoming these obstacles requires not merely technical legal solutions but a political commitment to placing the dignity and safety of workers at the center of the development agenda, and a recognition that sustainable economic development cannot be built on the systematic sacrifice of workers' health and lives.

### 42.2 A Fifteen-Point Legislative and Institutional Reform Program

On the basis of the comprehensive analysis in this Part, the following fifteen-point program of legislative and institutional reform is proposed for Bangladesh's OSH framework.

The first reform is the enactment of a comprehensive Occupational Safety and Health Act, modelled on the approach of Convention No. 155 and incorporating the requirements of Conventions 187 and 190. This Act should establish the general duty of employers to ensure, so far as is reasonably practicable, the health, safety, and welfare of all workers; the right of workers to refuse unsafe work without fear of retaliation; the obligation of employers to conduct systematic risk assessments and to maintain safe management systems; the right of workers and their representatives to participate in OSH management; and the obligation of the state to maintain an effective inspection and enforcement system.

The second reform is the constitutional recognition of the right to safe and healthy working conditions as a fundamental right in Part III of the Constitution of Bangladesh, enforceable through the courts, with both individual and collective dimensions.

The third reform is the establishment of an independent National OSH Regulatory Authority, with statutory independence from the Ministry of Labour and Employment, a tripartite governance structure that gives workers and their organizations an effective role in governance, and a mandate that covers all sectors of the economy, including the EPZs.

The fourth reform is a comprehensive recapitalization and reform of the Department of Inspection for Factories and Establishments. This requires: a doubling of the number of qualified inspectors within five years; competitive salaries for inspectors benchmarked to the professional labor market; specialist technical training programs in structural engineering, fire safety, electrical safety, chemical hazards, and ergonomics; transparent and randomized inspection protocols; and an effective internal and external accountability system.

The fifth reform is the establishment of a compulsory workers' compensation insurance system, requiring all employers to maintain adequate insurance cover for workplace injuries and occupational diseases, with a national insurance fund to cover cases where employers are insolvent or uninsured, and with compensation amounts linked to the actual economic loss of workers and their families rather than to fixed statutory schedules.

The sixth reform is the development of a comprehensive national occupational health services system, including a network of occupational health clinics in industrial areas, a mandatory medical surveillance program for workers in high-risk occupations, a national occupational disease surveillance system, and the training of a cadre of professional occupational health practitioners.

The seventh reform is the comprehensive reform of the Safety Committee system, restoring and strengthening the worker participation rights eroded by the 2022 amendment, ensuring that Safety Committees have genuine authority, adequate resources, and effective legal protection for worker representatives from retaliation.

The eighth reform is the adoption of a comprehensive national Violence and Harassment Policy and the enactment of legislation implementing ILO Convention No. 190, including the establishment of accessible complaint mechanisms at the workplace level, effective protection against retaliation, and appropriate remedies and support services for victims.

The ninth reform is the extension of OSH legal protection to all workers, regardless of employment status or sector, including agricultural workers, domestic workers, informal economy workers, home-based workers, and platform workers, through a combination of statutory extension of coverage and the development of alternative regulatory mechanisms appropriate for informal settings.

The tenth reform is the integration of climate change adaptation into the national OSH framework, including the development of specific regulations on heat stress, extreme weather events, and climate-sensitive occupational health hazards, and the adoption of a just transition framework for workers in climate-affected industries.

The eleventh reform is the reform of the EPZ OSH regime, extending the jurisdiction of the national OSH regulatory authority to cover all EPZ factories, applying the same OSH standards that apply in non-EPZ sectors, and integrating EPZ workers into the national tripartite OSH framework.

The twelfth reform is the development of a supply chain OSH accountability framework, consistent with the EU CSDDD and the UNGPs, requiring international brands sourcing from Bangladesh to conduct due diligence on OSH conditions in their supplier factories, with civil liability for failure to conduct adequate due diligence or to address identified violations.

The thirteenth reform is the development of a robust national OSH data system, including systematic collection and analysis of workplace accident and occupational disease data, a national registry of occupational injuries and diseases, and regular publication of comparative sectoral OSH performance data as a mechanism for public accountability.

The fourteenth reform is the development of a comprehensive OSH education and awareness program, targeting employers, workers, safety professionals, and the general public, and utilizing the full range of media and communication channels, including digital and social media, to promote a culture of safety as a shared social value rather than a regulatory compliance exercise.

The fifteenth reform is the development of an effective framework for the implementation and monitoring of ILO Conventions 155, 187, and 190, including the designation of a national focal point for Convention implementation, the development of implementation roadmaps with specific, measurable targets, regular reporting to the ILO's supervisory bodies, and a national tripartite review mechanism to assess progress and address implementation gaps.

### 42.3 The Governance Framework for Reform Implementation

The implementation of the reform program proposed above requires a governance framework that can coordinate action across multiple institutions and levels of government, that can sustain

reform momentum over the medium and long term, and that can manage the political obstacles that will inevitably arise as powerful interests resist the costs of compliance.

The institutional architecture for reform implementation should center on the independent National OSH Regulatory Authority recommended in the third reform above, which should be given the mandate and the resources to lead the development and implementation of the national OSH system required by Convention 187. The Authority should have a tripartite governance board, a professional and technically qualified secretariat, and a statutory mandate to report annually to Parliament on the state of OSH in Bangladesh.

The reform implementation process should be supported by a robust monitoring and evaluation framework, including baseline assessments of current OSH conditions across all sectors, annual progress reports against specific targets, regular external audits by independent experts, and a mechanism for workers and civil society organizations to provide input on implementation progress and to flag implementation failures.

International cooperation and technical assistance will be essential to the implementation of the reform program, given the scale of the capacity building required. The ILO's technical assistance through the Better Work program, the RMGP project, and bilateral development partners has been important in supporting previous phases of OSH reform, and this support should be maintained and expanded to cover the new requirements of the Convention ratifications and the 2025 legislative reforms.

### 42.4 The Connection Between OSH Reform and the Broader Labour Rights Agenda

The analysis throughout this Part has consistently returned to a fundamental insight: OSH rights and collective labour rights are not separable domains that can be reformed independently of each other. They are aspects of a single, integrated commitment to the equal dignity, democratic standing, and physical safety of every working person.

Workers who have no effective collective voice cannot exercise their right to refuse unsafe work, because they face the threat of dismissal or blacklisting if they challenge their employer's safety decisions without the protection of collective organization. Safety Committees that lack genuine worker power cannot fulfill their function of identifying and addressing hazards, because worker representatives who are dependent on the employer's goodwill cannot challenge the employer's safety decisions effectively. The right to strike and the right to safe work are connected: the ability of workers to take collective action is one of the most powerful mechanisms through which workers can insist on safety improvements and resist employers' attempts to sacrifice safety for productivity.

This integration of OSH and collective labour rights is not merely theoretical. The evidence from the Accord program is directly relevant: the factories covered by the Accord, which gave trade unions a role in governance, achieved significantly better safety improvements than the voluntarily governed Alliance factories, because worker organization created accountability that employer self-regulation could not provide. And the evidence from countries with strong collective labour rights is consistent with this finding: countries with high trade union density

and effective collective bargaining mechanisms have lower rates of occupational injury and disease than comparable countries with weak collective labour rights.

The comprehensive reform of Bangladesh's labour law, spanning both the collective rights analyzed in Part Four and the OSH rights analyzed in this Part, is therefore not two separate reform projects but a single integrated project of building a labour law system that genuinely respects and protects the equal dignity and democratic standing of all working people. The reforms proposed in this Part and in Part Four are mutually reinforcing: genuine OSH reform requires strong collective labour rights, and genuine collective rights reform requires a safe and healthy working environment in which workers can exercise those rights without fear of physical harm.

### 42.5 The Long-Term Vision: A Safe and Dignified Workplace for Every Worker in Bangladesh

The ultimate aspiration of the reform agenda proposed in this Part is a Bangladesh in which every worker, regardless of sector, employment status, gender, or location, has the legal right and the practical ability to work in an environment that is free from preventable hazards, from violence and harassment, and from the arbitrary power of employers to sacrifice workers' health and lives for profit.

This vision is not utopian. It is the standard that Bangladesh has committed to meeting through its ratification of the ILO's fundamental OSH conventions and its enactment of the 2025 Ordinance. It is the standard that the philosophical analysis of this Part has demonstrated to be required by any theory of justice that takes seriously the equal dignity of all persons. And it is the standard that Bangladesh's workers, who have built the country's economy through their labor and who have paid for the current inadequacies of the OSH system with their lives and health, have every right to demand.

The garment workers who survived Rana Plaza, who bear in their bodies the injuries inflicted by a system of regulatory failure, political corruption, and employer impunity, have taught Bangladesh and the world what is at stake in the law of occupational safety. The brick kiln workers whose lungs are slowly destroyed by silica dust, the shipbreaking workers who carry asbestos fibers in their bodies for decades, the domestic workers who have no legal protection against the hazards of their work, the agricultural workers who collapse in the summer heat of the Barind tract: all of these workers are present in spirit in every provision of the reform agenda proposed in this Part. They have not asked for charity or for sympathy. They have asked, through their organized demands and through the campaigns of those who advocate for them, for the law to recognize and enforce their fundamental right to work in safety and dignity.

The question before Bangladesh's legislators, administrators, judges, and civil society is whether they will meet that demand, whether they will make the political choices and the institutional investments that genuine OSH reform requires, or whether they will continue to accept the systematic sacrifice of workers' health and lives as the price of cheap production for global markets.

The analysis of this Part argues, with conviction born of the philosophical, historical, comparative, and empirical evidence assembled here, that Bangladesh has both the obligation and the capacity to build a genuinely rights-based OSH framework that meets the standards of the newly ratified ILO conventions and the dignity of every working person. The reform agenda proposed here is ambitious, but it is grounded in a realistic assessment of what is possible and what is necessary. The time for incremental adjustments to a fundamentally inadequate system has passed. The time for comprehensive, rights-based reform is now.

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*End of Part Five*

*Part Six of this work will examine the law of wages and remuneration in Bangladesh, including the minimum wage system, the wage-setting process, the controversies surrounding the October 2023 garment sector wage protests and their deadly suppression, the Workers Profit Participation Fund, payment systems and their regulation, and the reform agenda for a comprehensive, rights-based wage framework grounded in the concept of a living wage consistent with human dignity. The analysis of wages in Part Six will be intimately connected to the analysis of collective rights in Part Four and OSH rights in Part Five, because a wage that is insufficient for a worker to meet the basic needs of life is itself a form of violence, and the right to a living wage is as fundamental a dimension of the right to human dignity as the right to physical safety.*

*The thread connecting the analysis of collective rights, OSH rights, and wage rights is the single philosophical conviction that animates this entire textbook: that workers are not inputs in a production process, not commodities to be bought and sold at the market price, not instruments of another's purposes, but human beings of equal dignity and equal worth, whose rights the law must recognize, protect, and enforce, not as a gift or a concession, but as an obligation of justice.*

# PART SIX: THE LAW OF WAGES AND REMUNERATION IN BANGLADESH: FROM SUBSISTENCE TO DIGNITY

## PREFATORY NOTE TO PART SIX

The analysis of wages and remuneration in Bangladeshi labour law brings the reader to what is arguably the most contested, most consequential, and most philosophically charged terrain in the entire field of labour regulation. Wages are not simply a price. They are not simply the monetary expression of the value of labour power in a market transaction. They are, at their deepest level, a statement about what a society believes a human being's time, energy, and creativity are worth. They are an expression of the dignity or indignity that a society attributes to work and to the worker. And in Bangladesh, where the wage levels of millions of garment workers, agricultural labourers, domestic employees, and informal sector workers have been the subject of sustained political struggle, judicial contestation, and international controversy, the law of wages is a lens through which the entire moral and political character of the society can be examined and judged.

This Part examines the law of wages and remuneration in Bangladesh across eight chapters. It begins with the philosophical and jurisprudential foundations of the wage right, tracing the intellectual history of wage theory from classical political economy through Marxist analysis, welfarist economics, capability theory, and the emerging human rights framework of the living wage. It then examines the historical development of wage regulation in Bengal, Pakistan, and Bangladesh, tracing the colonial origins of the minimum wage system and its postcolonial transformations. The central chapters provide a detailed legal analysis of the current minimum wage system established by the Bangladesh Labour Act, 2006, and its subsequent amendments, including the Bangladesh Labour (Amendment) Ordinance, 2025. A dedicated chapter offers the most comprehensive critical analysis yet written of the catastrophic October to November 2023 wage protests, their violent suppression by state forces, the criminalization of tens of thousands of workers, and the profound constitutional and human rights questions those events raised. Subsequent chapters analyze the Workers Profit Participation Fund, the law of wage payment and protection, and the reform agenda for a comprehensive, rights-based wage system grounded in the concept of a living wage consistent with human dignity. Throughout, the analysis is informed by the latest developments in wage theory, comparative labour law, and the institutional reform processes that have been set in motion in Bangladesh since the political transition of August 2024.

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## CHAPTER FORTY-THREE: THE PHILOSOPHY AND JURISPRUDENCE OF WAGES: WHAT IS A WORKER OWED?

### 43.1 The Wage Question as a Philosophical Question

There is, at first appearance, something odd about treating the wage as a philosophical question. The wage, from the perspective of mainstream economic theory, is a price: the price of labour in a competitive market, determined by the intersection of supply and demand, and not in any

obvious sense a matter of moral philosophy. This contractarian-economistic understanding of wages has been enormously influential in shaping how policymakers, courts, and legal scholars think about wage regulation. It underlies the persistent suspicion, expressed by employers and their advocates in Bangladesh and throughout the developing world, that minimum wage legislation is an interference with the natural workings of an efficient market, that it distorts price signals, reduces employment, and ultimately harms the workers it is intended to protect.

But this economistic reduction of the wage question is profoundly incomplete, and it is incomplete precisely because it abstracts from the social and political conditions under which wages are actually determined. Long before the marginal productivity theory of wages was formulated by Alfred Marshall and John Bates Clark in the late nineteenth century, social philosophers and political economists had recognized that the wage is not a price like other prices, because the thing being priced is not a commodity like other commodities. When a worker sells labour power, what is being exchanged is not a separable product but a portion of the worker's living time, bodily effort, and creative capacity. The worker cannot withdraw the labour from the worker's person and deliver it independently; the worker delivers the labour along with the worker's self, submitted to the authority and direction of the employer for the duration of the working day. This fundamental characteristic of the employment relationship, which distinguishes it from every other market transaction, is the reason why the wage has always been and must always be a moral and political question as well as an economic one.

The philosophical tradition most explicitly concerned with the justice of wages is the natural law tradition, and within that tradition the concept of the just wage. The Scholastic philosophers of the medieval period, drawing on Aristotle's analysis of distributive and commutative justice, argued that every seller of goods or services had a moral entitlement to the just price: the price that reflected the genuine value of what was sold and that was sufficient to enable the seller to live in a condition appropriate to his station. Thomas Aquinas, in the Summa Theologiae, applied this principle to the employment relationship and argued that an employer who paid a worker less than the just wage committed an act of injustice equivalent to fraud or theft. This Scholastic doctrine was developed and refined over the centuries, reaching its most sophisticated modern expression in the social Catholic tradition, particularly in Pope Leo XIII's encyclical Rerum Novarum (1891), which argued that the state had a positive obligation to ensure that wages were sufficient to support a family in reasonable comfort, and that workers had a natural right to a wage that was adequate to their needs.

The natural law tradition, importantly, does not rest the claim to a just wage on market outcomes. It rests the claim on the prior moral fact that every human being has needs that must be met and a dignity that must be respected, and that an employment relationship that fails to meet the worker's basic needs is unjust regardless of what a competitive labour market would generate. This is a genuinely radical philosophical claim: it asserts that there is a floor below which no wage can fall without violating justice, even if the market wage happens to fall below that floor. And it is a claim that continues to animate contemporary debates about the living wage, about the minimum wage, and about the obligations of states and employers in setting and enforcing wage floors.

The liberal philosophical tradition, associated most influentially with John Rawls, approaches the wage question somewhat differently. As noted in Chapter One of this work, Rawls's theory of justice holds that the principles governing the basic structure of society should be those that rational persons would choose from behind a veil of ignorance, not knowing what position they would occupy in the social hierarchy. Applied to the wage structure, Rawlsian analysis would support the principle that the wage floor should be set at the highest level consistent with the greatest benefit to the least advantaged members of society. This is not the same as the natural law claim for a just wage, because it makes the morally acceptable wage level dependent on empirical facts about the economic effects of different wage floors rather than on a prior determination of what workers are intrinsically entitled to. But it converges with the natural law tradition in rejecting the view that market-determined wages are inherently just and in supporting state intervention to establish and enforce a wage floor.

The most radical philosophical critique of the wage system as such is found in the Marxist tradition. Marx's analysis in Capital and in the Critique of the Gotha Programme argues that the entire wage system is a form of exploitation: that the wage conceals the fact that the worker produces more value than the worker receives in wages, and that this surplus value is appropriated by the capitalist as the basis of profit. From this perspective, the minimum wage is not a solution to the injustice of the wage system but at best a partial and temporary mitigation of its worst effects. The just wage, in the Marxist framework, would be a wage equal to the full value of what the worker produces, which would eliminate profit and with it the capitalist system. More practically, Marx insisted in the Critique of the Gotha Programme that the slogan of the workers' movement should not be "a fair day's wages for a fair day's work" but rather the abolition of the wage system itself, by which Marx meant the abolition of the regime in which workers are compelled to sell their labour power to capital owners as the condition of their subsistence.

Contemporary labour philosophy has moved beyond these classical frameworks without entirely abandoning them. The capabilities approach developed by Amartya Sen and Martha Nussbaum has been particularly influential in reframing the wage question. Nussbaum's capabilities framework, which identifies a list of central human capabilities that every person is entitled to have available, including bodily health, bodily integrity, emotional development, practical reason, affiliation, and play, implies that a wage is just only if it is sufficient to maintain the conditions for the exercise of these central capabilities. A worker whose wage is so low that she cannot afford adequate food, healthcare, housing, or education for her children is a worker whose central capabilities are being denied, and this denial constitutes a form of injustice regardless of whether the wage was freely agreed to. The capabilities approach thus provides a philosophically sophisticated and practically applicable standard for assessing the adequacy of wages: a wage is adequate if it is sufficient to maintain the worker's central human capabilities at a threshold level.

The human rights approach to wages, which has gained increasing prominence in international legal discourse over the past two decades, translates these philosophical arguments into the language of enforceable legal entitlements. Article 7 of the International Covenant on Economic, Social and Cultural Rights, ratified by Bangladesh in 1998, recognizes the right of everyone to the enjoyment of just and favorable conditions of work, including fair wages and equal remuneration for work of equal value and a decent living for themselves and their families. The

ILO's concept of decent work, developed by Director-General Juan Somavia in 1999 and elaborated in subsequent ILO instruments and reports, similarly includes the notion of a wage that is adequate to support a decent life as a core element of the decent work agenda. These international frameworks establish that the wage question is not merely an economic question to be resolved by market mechanisms but a human rights question to be addressed through legal obligations, institutional frameworks, and democratic accountability.

### 43.2 Classical and Neoclassical Wage Theory: The Market as Moral Arbiter

Before developing the critique of market wage determination, it is necessary to understand the theory being criticized with some care. The neoclassical theory of wages, which is the dominant framework in mainstream economics, holds that in a competitive labour market the wage paid to each worker will tend to equal the worker's marginal product: the additional output that the worker contributes to the firm's production. This marginal productivity theory of wages, associated with John Bates Clark and Alfred Marshall in the late nineteenth century and subsequently developed into the sophisticated apparatus of modern microeconomics, carries important normative implications that are not always made explicit.

Clark argued, in The Distribution of Wealth (1899), that if wages were equal to marginal products, then they were just, because every worker received exactly what she contributed to the social product. This argument, sometimes called the productivity theory of distributive justice, was enormously influential in legitimating the existing distribution of income in capitalist societies and in delegitimating proposals for state intervention in wage-setting. If the market wage already reflects each worker's contribution, then any deviation from the market wage, whether upward through minimum wage legislation or downward through monopsony power, distorts the otherwise just distribution of income.

The productivity theory of distributive justice has been subjected to devastating philosophical critique at several levels. First, as Rawls pointed out, the marginal product of a worker depends not only on the worker's effort and ability but on the social context in which those efforts are deployed, including the availability of technology, the investment decisions of capitalists, the social infrastructure of education and health, and the accumulated knowledge of previous generations. A garment worker in Bangladesh who produces twenty garments per day is not producing more or less than a garment worker in Germany because of some intrinsic difference in their respective productivity; she is producing at a different productivity level because the German worker has access to better machinery, better training, better infrastructure, and a better social environment. There is no philosophical justification for treating the market-determined wage as a measure of the individual worker's contribution to a joint social product that is inherently collaborative and social in character.

Second, the competitive labour market that the neoclassical model assumes is a theoretical abstraction that bears little resemblance to actual labour markets, and especially not to the labour markets of low-income countries like Bangladesh. Labour markets in Bangladesh are characterized by profound information asymmetries, high mobility costs for workers, employer collusion in wage-setting, the absence or weakness of worker organizations, and the structural compulsion that forces workers to accept whatever terms employers offer because the alternative

is destitution. In such conditions, the market wage reflects not the worker's marginal product but the balance of power between employers and workers, a balance that is systematically skewed in favour of employers. As the Nobel Prize-winning economist Joseph Stiglitz observed in his 2012 work The Price of Inequality, the wage determination process in markets characterized by monopsony power, information asymmetry, and collective action failures systematically undervalues workers' contributions and generates wages below the competitive level.

Third, even if one grants the marginal productivity theory on its own terms, it cannot generate the normative conclusion that market wages are just without additional premises about the fairness of the distribution of assets and the rules of the game. As G.A. Cohen showed in his Marxist critique of Rawlsian liberalism, the market distributes income according to productivity only against the background of a particular distribution of property rights, and the justice of market outcomes cannot be assessed independently of the justice of the distribution of property rights that generates them. In Bangladesh, where the distribution of productive assets, land, and capital reflects a history of colonial dispossession, feudal privilege, and political manipulation, the claim that market wages are just because they reflect marginal products is philosophically untenable.

The contemporary development in wage economics that most directly engages these philosophical issues is the literature on the labor share of income and wage stagnation. Research by economists including Lawrence Katz and Alan Krueger, David Card, and the economists associated with the Economic Policy Institute has documented that across the developed world, and increasingly in developing countries as well, the wage share of national income has declined substantially over the past four decades while the profit share has increased. This is precisely what Marxist theory would predict: as the balance of power between capital and labour shifts in favour of capital due to globalization, deindustrialization, the weakening of trade unions, and the financialization of the economy, the distribution of income shifts away from wages and towards profits. The analytical frameworks of neoclassical economics, which predicts that wages should track productivity, struggle to explain this persistent and widening divergence between productivity growth and wage growth.

David Card's Nobel Prize-winning research on minimum wages, particularly the pathbreaking 1994 study with Alan Krueger of fast food restaurants in New Jersey and Pennsylvania, challenged the conventional economic wisdom that minimum wage increases reduce employment. Card and Krueger found that increases in the minimum wage had little or no negative employment effect and in some cases produced positive employment effects, contradicting the standard competitive model. More recent research, including work by Arindrajit Dube, has confirmed and extended these findings, suggesting that minimum wages in the range typical of developed countries have modest positive employment effects and significant positive effects on worker welfare. This empirical literature has fundamentally undermined the case for the view that labour markets are sufficiently competitive that market wages are optimal and that minimum wage legislation is harmful, though it remains contested and the debate continues.

### 43.3 Wage Justice in International Law: From Standard to Right

The translation of the philosophical concept of the just or living wage into the vocabulary of international law is a development of the twentieth century, associated primarily with the founding and development of the International Labour Organization. The ILO's Constitution of 1919 included among the principles that should guide national and international labour standards the principle that labour is not a commodity and the principle that all workers are entitled to wages adequate to maintain a reasonable standard of life. These principles have been elaborated through a series of ILO Conventions and Recommendations, the most important of which for present purposes are the Minimum Wage Fixing Convention (No. 131) of 1970 and the accompanying Recommendation (No. 135).

Convention No. 131 requires ratifying states to establish a system of minimum wages that covers all groups of wage earners whose terms of employment are such that coverage would be appropriate, and that takes into account the needs of workers and their families and economic factors, including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment. Recommendation No. 135 elaborates the criteria for fixing minimum wages to include the cost of living and changes therein, the general level of wages in the country, living standards of other social groups, economic factors including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment.

Bangladesh has not ratified Convention No. 131, which is significant from a legal standpoint but does not mean that Bangladesh is not subject to international standards in this area. The ICESCR, which Bangladesh ratified in 1998, contains in Article 7 a recognition of the right of everyone to the enjoyment of just and favorable conditions of work, which the Committee on Economic, Social and Cultural Rights (CESCR) has interpreted to include a minimum wage sufficient to allow the worker and his or her family to enjoy a decent standard of living. The CESCR's General Comment No. 23 of 2016 on the right to just and favorable conditions of work provides an authoritative interpretation of Article 7 that has direct relevance to Bangladeshi law and policy: it affirms that minimum wages should be regularly reviewed and adjusted to ensure that they allow workers to live a life in dignity and to meet the basic needs of themselves and their families.

The concept of the living wage, which has become increasingly central to international debates about wage adequacy, deserves careful definitional analysis. The living wage is typically defined as a wage sufficient to meet a worker's basic needs and those of a dependent family, including adequate food, housing, healthcare, education, transportation, and a modest provision for savings and participation in social and cultural life. This definition distinguishes the living wage from the minimum wage in two important respects. First, the living wage is defined by reference to the actual cost of meeting basic needs, rather than by any arbitrary threshold or by the outcomes of a political bargaining process. Second, the living wage takes into account family needs as well as individual needs, reflecting the reality that workers typically support dependents as well as themselves.

The most influential recent development in living wage methodology is the Anker Living Wage methodology developed by Richard Anker and Martha Anker, which has been adopted by the Global Living Wage Coalition and is used as the basis for living wage benchmarks in a growing

number of countries including Bangladesh. The Anker methodology calculates the living wage as the cost of a nutritious diet consistent with national dietary guidelines, the cost of adequate housing, the cost of essential non-food items including clothing, healthcare, education, transportation, and communications, plus a small amount for unexpected expenses. For Dhaka, Bangladesh, the Anker Research Institute's living wage estimate as of 2024 is approximately BDT 28,000 to 30,000 per month for a household with two adults and two children where both adults work, implying an individual living wage of approximately BDT 14,000 to 15,000 per month. The Bangladesh Institute of Labour Studies (BILS) has calculated a somewhat higher living wage figure of BDT 33,368, while trade unions have demanded a minimum wage of BDT 23,000. Against these benchmarks, the current minimum wage of BDT 12,500 is substantially below any credible estimate of the living wage.

## 43.4 Wage Theory and the Jurisprudence of Exploitation

The concept of exploitation, which lies at the heart of the Marxist analysis of wages, has received renewed philosophical attention in recent years, and this renewed attention has produced important insights for the jurisprudence of wage regulation. The Marxist definition of exploitation as the extraction of surplus value through the wage relation is analytically powerful but has been criticized on several grounds, including that it depends on the labour theory of value, which most contemporary economists reject, and that it fails to explain why exploitation is wrong in a way that does not presuppose a prior commitment to socialist political economy.

Contemporary philosophers of exploitation, particularly John Roemer, Alan Wertheimer, and Ruth Sample, have developed more philosophically defensible accounts of exploitation that do not depend on the labour theory of value but that nonetheless support strong conclusions about the injustice of very low wages. Wertheimer's influential account in Exploitation (1996) defines exploitation as occurring when party A takes unfair advantage of party B's vulnerability in a transaction, even if B consents to the transaction and even if B benefits from the transaction. On this account, an employer who pays extremely low wages to workers who have no alternative but to accept those wages because of their vulnerability is exploiting those workers, even if the transaction is formally consensual and even if the wage is higher than zero. The morally relevant question is not whether consent was given but whether the terms of the transaction are fair given the respective vulnerabilities and options of the parties.

Sample's account in Exploitation: What It Is and Why It's Wrong (2003) emphasizes the dimension of degradation in exploitation: the exploiter not only takes unfair advantage of the exploited but treats the exploited as a mere means, as a resource to be used rather than a person to be respected. This dimension of degradation is particularly salient in the context of extremely low wages: a wage that is insufficient to maintain a worker's health, dignity, and basic functioning treats the worker not as a human being whose needs matter but as an instrument of production whose costs are to be minimized. The degradation of workers through poverty wages is not only a philosophical concern; it has been extensively documented in Bangladesh, where garment workers have reported the humiliating experience of being unable to afford adequate food, healthcare, or education for their children while producing goods that retail for hundreds of dollars in wealthy countries.

The jurisprudential implications of this analysis of exploitation are significant. If exploitation is wrong not merely because it makes workers worse off than they would be in a more equal society but because it treats workers with disrespect and denies their dignity, then the legal obligation to prevent exploitation cannot be fully discharged merely by establishing a minimum wage floor. It requires attention to the entire structure of the wage-setting process, to the extent to which workers have genuine voice in determining the wages they receive, to the adequacy of enforcement mechanisms, and to the accountability of employers and governments for the consequences of inadequate wage standards.

### 43.5 The Productivity-Wage Relationship: Theory, Evidence, and the Bangladesh Problem

A central concern in the political economy of minimum wages, particularly in developing countries, is the relationship between wages and productivity. The conventional economic argument against minimum wages in developing countries holds that wages in those countries are low because productivity is low, and that raising wages without corresponding productivity increases will either reduce employment or reduce competitiveness. This argument has been particularly influential in the context of Bangladesh's garment sector, where employers and their associations have consistently argued that higher wages cannot be sustained without corresponding increases in productivity and export prices.

The empirical evidence on the productivity-wage relationship in Bangladesh's garment sector presents a more complex picture than the conventional argument suggests. Research by the ILO and independent economists has documented that worker productivity in Bangladesh's garment sector has increased substantially over the past two decades, driven by investment in new machinery, improvements in factory organization, and the accumulation of worker skills. Yet real wages in the sector have not kept pace with this productivity growth. The ILO's 2022 report on employment, wages, and productivity trends in the Asian garment sector found that while Bangladesh's garment productivity has grown substantially, the wage share of value added in the sector has declined, meaning that a larger proportion of the gains from productivity growth has been captured by employers and global buyers rather than by workers.

This evidence challenges the claim that low wages in Bangladesh simply reflect low productivity. They reflect, rather, the particular distribution of bargaining power in the global garment supply chain, in which global brands exercise monopsony power over suppliers, suppliers exercise employer power over workers, and workers have historically had little effective collective power to claim a larger share of the value they produce. The Bangladesh case thus illustrates what economists call the problem of value chain rent distribution: the question of how the total value generated along a global supply chain is distributed among the different actors in that chain, from raw material producers through manufacturers and logistics providers to global brands and ultimately to consumers. The current distribution systematically advantages global brands at the expense of workers, and no amount of worker-specific productivity improvement will change this distribution without changes in the power relations that govern the supply chain.

The relevance of this analysis for wage law is direct. The legal framework for wage-setting in Bangladesh cannot address the wage question in isolation from the structure of the global supply

chain in which Bangladeshi garment producers operate. A minimum wage set by the Bangladeshi government without reference to the pricing practices of global brands, without mechanisms to ensure that buyers absorb wage increases rather than squeezing supplier margins, and without international cooperation to prevent a race to the bottom in labour standards, will always face the structural constraint that the competitiveness of the sector is partly determined by forces outside domestic law. This does not mean that domestic minimum wage legislation is futile; the evidence suggests that minimum wages have positive effects on worker welfare and that the employment effects are modest. But it does mean that domestic wage law must be understood as part of a broader system of international governance of global supply chains, and that the reform of Bangladeshi wage law needs to be accompanied by advocacy for changes in the international regulatory framework.

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## CHAPTER FORTY-FOUR: THE HISTORICAL DEVELOPMENT OF WAGE REGULATION IN BANGLADESH: FROM COLONIAL CONTROL TO POSTCOLONIAL BARGAINING

### 44.1 Colonial Wage Policy: Maintaining the Labour Reserve

The history of wage regulation in Bengal under British colonial rule is a history of deliberate suppression, systematic extraction, and calculated maintenance of a large reserve of cheap labour. Understanding this history is essential not merely for its own sake but because many of the structural features of contemporary wage determination in Bangladesh can be traced directly to the colonial political economy and the legal frameworks it established.

The colonial administration's approach to wages in Bengal was shaped by two overriding imperatives: the need to maintain the profitability of colonial enterprises, primarily the indigo plantations, tea gardens, jute mills, and cotton weaving establishments, and the need to prevent the emergence of a strong, organized, and politically conscious working class. These imperatives were largely consistent, because both pointed toward the maintenance of low wages and the prevention of effective collective bargaining. Low wages maintained the profitability of colonial enterprises, and the absence of effective worker organization prevented the development of the political consciousness and organizational capacity that might have challenged colonial rule.

The legal mechanisms through which colonial wage policy was implemented were diverse and mutually reinforcing. The workmen's breach of contract legislation, discussed in Part One of this work, prevented workers from seeking higher wages by threatening criminal sanctions for breach of employment contracts. The land settlement system maintained a large semi-proletarian population of smallholding peasants who were available as a reserve labour force for industrial enterprises during periods of peak demand and who could be expelled back to the villages during slack periods, thereby preventing the formation of a stable, organized working class. The anti-combination legislation prevented the formation of trade unions, and even after the Trade Unions Act of 1926 formally recognized the right to organize, the practical obstacles to effective union organization remained enormous.

Formal wage regulation by the colonial state was minimal and late. The first minimum wage legislation in British India, the Minimum Wages Act of 1948, was enacted only in the final year of colonial rule, reflecting both the belated recognition that voluntary wage determination was producing conditions of gross exploitation and the pressure of the labour movement and international opinion that had been building since the end of the Second World War. The Minimum Wages Act of 1948 established a system of minimum wages for scheduled employments: a list of industries and occupations designated by the central or provincial governments as being in need of minimum wage protection because workers in those industries lacked the bargaining power to obtain adequate wages through collective negotiation. This system of scheduled employment minimum wages, rather than a single national minimum wage, was the model adopted by Bangladesh after independence and remains the basic architecture of the wage regulation system today, though with significant modifications.

The tea garden sector, which was economically important in colonial Bengal and remains significant in Bangladesh today, had a particularly distinctive colonial labour regime. Tea garden workers, recruited under the Assam Labour and Emigration Acts through a system of indentured recruitment that was barely distinguishable from coerced labour, were subject to a regime of debt bondage, corporal punishment, and territorial confinement that was documented in parliamentary debates and colonial administration reports with a candour that is startling to read. The wages paid to tea garden workers were among the lowest in any organized sector of the colonial economy, and the legal regime actively prevented workers from leaving the gardens or seeking employment elsewhere.

The colonial period also saw the development of the bonus system as a supplement to wages in certain industries, particularly the jute mills. The annual bonus, typically paid at the time of the major religious festivals, was initially a discretionary payment by employers but gradually became a customary expectation and ultimately a legal entitlement. The Payment of Wages Act of 1936 and the Payment of Bonus Act of 1965 regulated these payment systems and provided important protections against arbitrary deductions and non-payment, but they were designed with the formal sector in mind and provided no protection for the vast majority of workers in the informal economy.

## 44.2 The Pakistan Period and the Wage Structure of East Bengal

The transition from colonial to Pakistani rule in 1947 did not fundamentally alter the structure of wage determination in East Bengal, but it created new contradictions and new political dynamics around the wage question. The Pakistani ruling class, dominated by West Pakistani industrial and commercial interests, had little incentive to improve wages in the east wing of the country, and the structural economic policies of the Pakistan period systematically transferred resources from East to West Pakistan, maintaining East Pakistan as a source of cheap agricultural and industrial commodities.

The jute industry, which was concentrated in East Pakistan and which generated the foreign exchange earnings that financed West Pakistani industrialization, was a classic example of the colonial-within-colonial dynamic described in Part One. Jute mill workers in Narayanganj and Khulna were paid wages far below what could reasonably be characterized as a living wage,

while the profits from the jute trade flowed largely to West Pakistani and foreign interests. The Minimum Wages Ordinance of 1961, enacted by the Ayub Khan military government, introduced a more systematic framework for minimum wage regulation, establishing the Minimum Wages Board as a permanent body with the responsibility for fixing and revising minimum wages across different industries. This institutional architecture, though established under conditions of military authoritarianism, provided the basic institutional framework that post-independence Bangladesh inherited and adapted.

Trade union activity in East Pakistan was caught in a complex web of political loyalties and organizational constraints. The major trade union federations were closely aligned with political parties, particularly the Awami League and the National Awami Party, and union activities were frequently suppressed by the Pakistani military administration. The wages question was intertwined with the broader political struggle for Bengali autonomy: workers who demanded higher wages were implicitly challenging the economic exploitation of East Pakistan by West Pakistani capital, and their demands were therefore both an economic grievance and a political claim.

The liberation war of 1971, fought with extraordinary courage and sacrifice by the Bengali people, was in part a war about the distribution of economic resources and about the dignity of Bengali labour. The Bengali language movement of 1952 had established that the Pakistani state's denial of Bengali cultural and linguistic rights was an expression of a broader denial of Bengali political and economic equality. The wage grievances of Bengali industrial workers, agricultural labourers, and jute mill employees were part of this same broader struggle, and the promise of a just social order in which the labour of ordinary Bangladeshis would be adequately rewarded was central to the ideology of the independence movement.

### 44.3 Independence, the 1972 Constitution, and the Early Labour Policy of Bangladesh

The Constitution of Bangladesh, 1972, adopted within months of independence, contained important provisions relevant to wage rights. Article 14 established the fundamental principle that it is a fundamental responsibility of the state to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation. Article 20 declared work to be both a right and a duty of every citizen capable of working and established the principle of equal wages for equal work. Part II of the Constitution, containing the Fundamental Principles of State Policy, included Article 15, which established the basic necessities of life, including food, clothing, shelter, education, and medical care, as a fundamental responsibility of the state, and Article 34, which prohibited all forms of forced labour.

These constitutional provisions, particularly the commitment to emancipate the toiling masses from exploitation, reflected the social democratic aspirations of the independence movement and the influence of socialist ideology on the thinking of the Awami League leadership. But their practical legal force was severely limited by their placement in Part II as Fundamental Principles of State Policy rather than in Part III as enforceable Fundamental Rights. The courts cannot enforce these principles directly, and successive governments have invoked their non-justiciable

character to justify failure to act on the constitutional commitment to adequately remunerate labour.

The early years of Bangladesh's independence saw a series of labour policy initiatives that reflected the social democratic commitments of the Mujib government. The nationalization of major industries in 1972, the dissolution of the old landlord class through the land reforms of 1972 to 1975, and the establishment of new labour legislation through the Emergency Powers Rules and subsequent statutory instruments were all intended to fulfill the constitutional promise of a just social order. But the economic chaos of the early independence period, the devastating famine of 1974, the political instability that culminated in the assassination of Mujibur Rahman in August 1975, and the subsequent military takeovers severely disrupted the implementation of any coherent wage policy.

### 44.4 The Export-Led Growth Model and the Suppression of Wages, 1975-2006

The political and economic history of Bangladesh from the mid-1970s to the enactment of the Bangladesh Labour Act in 2006 is a history of the deliberate suppression of wages as the cornerstone of an export-led growth strategy based on the competitive advantage of cheap labour. This strategy, endorsed by successive governments, development agencies including the World Bank and the International Monetary Fund, and the global buyers of Bangladeshi manufactured goods, was enormously successful in generating export growth and GDP growth but at the cost of systematically denying Bangladesh's workers their fair share of the gains from that growth.

The ready-made garment industry, which emerged from negligible origins in the late 1970s to become the dominant export sector by the mid-1980s, was built on the foundation of extremely low wages. The Korean entrepreneur Noorul Quader, who established the first modern garment factory in Bangladesh in collaboration with the Daewoo Corporation in 1979, recognized that Bangladesh's principal competitive advantage in the global garment trade was the availability of a large, trainable, and desperately poor workforce willing to work for wages a fraction of those prevailing in the Asian newly industrializing countries. This competitive advantage was deliberately maintained by governments that were reluctant to impose or enforce minimum wages in the export-processing sector and that consistently suppressed independent trade union organization.

The military governments of Ziaur Rahman and Hussain Muhammad Ershad institutionalized this model of export growth through cheap labour. The official minimum wages that were occasionally revised during this period lagged far behind inflation, and enforcement of even the modest legal standards that existed was negligible. The Export Processing Zone Act, which governs the Chittagong Export Processing Zone established in 1983, excluded EPZ workers from the protection of the labour laws applicable to other workers, effectively creating zones of legal exception in which normal labour rights did not apply. This legal architecture of exception, which will be analyzed in detail in Part Twelve of this work, served as a direct signal to foreign investors that the Bangladeshi state would guarantee an unregulated labour force in exchange for foreign investment.

The democratic transitions of 1990 and 1991, which ended the Ershad dictatorship and restored parliamentary governance, created new political space for labour organizing and for demands for wage improvements. The garment sector saw the emergence of a more visible and more organized labour movement in the 1990s, culminating in the major wage protests of 1994 and the establishment of revised minimum wages under pressure from workers and from international buyers concerned about their exposure to reputational risk. But the structural dynamic of wage suppression remained largely intact: the dominant political parties, the Awami League and the Bangladesh Nationalist Party, both maintained close ties to the garment manufacturers' associations and were reluctant to impose wage standards that would reduce the competitiveness of the sector.

The international human rights and labour rights community played an increasingly important role in Bangladesh's wage politics during this period. The campaigns of organizations like the Clean Clothes Campaign, Labour Behind the Label, and the National Labour Committee brought the conditions of Bangladeshi garment workers to international public attention, creating reputational pressure on global brands that sourced from Bangladesh and thereby creating some leverage for improvements in wages and working conditions. The development of corporate codes of conduct and supplier compliance programs by global brands in the 1990s represented an attempt to manage this reputational risk, but as subsequent analysis will demonstrate, the effectiveness of these private governance mechanisms in improving wages was severely limited.

The Bangladesh Labour Act, 2006, enacted after years of drafting and political negotiation, represented the first comprehensive codification of labour law in independent Bangladesh, replacing the patchwork of colonial era legislation that had governed industrial relations since independence. Its wage provisions, analyzed in detail in Chapter Forty-Five, reflected a compromise between the competing interests of workers, employers, and the state that satisfied none of them fully. Workers and labour rights advocates regarded the minimum wage provisions as inadequate and the enforcement mechanisms as toothless. Employers regarded the WPPF provisions and the collective bargaining requirements as burdensome. The state regarded the law as a necessary accommodation to international pressure while maintaining the fundamental structure of competitive advantage through cheap labour.

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## CHAPTER FORTY-FIVE: THE MINIMUM WAGE SYSTEM IN BANGLADESHI LAW: ARCHITECTURE, PROCESSES, AND CRITICAL ANALYSIS

### 45.1 The Legal Architecture of the Minimum Wage: The Minimum Wages Board

The Bangladesh Labour Act, 2006, Part XII, Sections 120 to 133, establishes the legal architecture for minimum wage fixing in Bangladesh. This architecture is built around the institution of the Minimum Wages Board (MWB), a tripartite body with the mandate to investigate wages and to fix minimum wages for different sectors of the economy. Understanding the legal structure of the MWB, its composition, powers, procedures, and limitations, is essential to any critical analysis of the minimum wage system.

Section 120 of the Bangladesh Labour Act, 2006, empowers the government to constitute a Minimum Wages Board for any class of establishment or industry to inquire into, and advise upon, the fixation and revision of the minimum rates of wages. The Board consists of a Chairman, who is appointed by the government and who should be, or have been, a judge of the Supreme Court or a person of similar standing, and an equal number of members representing employers and workers in the relevant industry, typically three on each side. This tripartite composition reflects the ILO's principle of tripartism: the idea that labour standards should be developed through a process of dialogue and negotiation between representatives of governments, employers, and workers. In practice, as this analysis will demonstrate, the tripartite character of the MWB has been severely compromised by the unrepresentative character of the worker members, the dominance of employer interests, and the decisive role of government in shaping the Board's recommendations.

Section 122 empowers the Minimum Wages Board to fix a minimum rate of wages for each class of worker in an industry. The minimum wage is expressed as a total package including basic wage, house rent allowance, medical allowance, conveyance allowance, and food allowance, with the total representing the floor below which no employer can lawfully pay any worker in the covered industry. Section 124 provides that the minimum wages so fixed shall come into force on such date as may be notified by the government, typically within sixty days of the Board's recommendation, and that any employer who pays wages below the minimum rate commits an offence punishable with fine under Section 128.

The formal legal structure appears reasonably sound, but it has three structural deficiencies that have consistently undermined its effectiveness in practice. The first deficiency is the absence of any mandatory time frame for wage revision: the Act specifies no maximum period between revisions, and in practice minimum wages have typically been revised only every five years, or sometimes less frequently. During a period of high inflation, a five-year interval between revisions allows the real value of the minimum wage to erode dramatically. From 2018, when the RMG minimum wage was set at BDT 8,000, to 2023, when it was revised to BDT 12,500, the annual inflation rate in Bangladesh averaged approximately seven to eight percent, meaning that the real value of the minimum wage by 2023 was substantially below its 2018 level even before the nominal increase. The Bangladesh Labour (Amendment) Ordinance, 2025, has addressed this deficiency by requiring minimum wage revision every three years rather than every five, an improvement but still potentially insufficient during periods of acute inflation.

The second structural deficiency is the inadequacy of the criteria guiding the Board's determinations. Section 122 of the original Act did not specify substantive criteria for the determination of minimum wages, leaving the Board with virtually unconstrained discretion to fix wages at whatever level the political balance of forces within the tripartite process produced. The absence of a living wage standard, a requirement that the minimum wage be sufficient to meet workers' basic needs, meant that the Board had no legal obligation to set the minimum wage above the poverty line or above the subsistence level. This absence of a substantive floor has been consistently exploited by employers and government representatives on the Board to hold wages down, invoking the competitiveness of the export sector and the risk of employment losses as reasons for restraint.

The third structural deficiency, arguably the most serious, is the unrepresentative character of the worker members of the Board. The Act requires that worker members be representative of the workers in the relevant industry, but in practice the selection of worker members has been shaped by political loyalties, the dominance of government-affiliated union federations, and the exclusion of independent union representatives. The Amnesty International report of December 2023 on the 2023 wage protests documented the specific finding that genuine union representatives had been excluded from the wage-setting process, that the worker members appointed to the Board did not represent the independent labour movement, and that the process lacked the genuine tripartite character required by ILO standards. This unrepresentative character of the tripartite process is not a minor procedural defect; it goes to the fundamental legitimacy of the wage-fixing process and to the question of whether the minimum wage reflects any genuine negotiation between employers and workers or is simply a figure dictated by the state and the employer lobby.

## 45.2 The Grade Structure and Sectoral Variation

A distinctive feature of Bangladesh's minimum wage system is its use of grade structures within sectors, setting different minimum wages for different categories of workers defined by skill level, experience, and function. In the ready-made garment sector, the current minimum wage structure (following the November 2023 revision) consists of seven grades, ranging from Grade 7 (the entry-level grade with the lowest minimum wage, set at a basic wage of BDT 6,000 plus allowances totaling BDT 12,500) to Grade 1 (the most skilled category, with significantly higher total compensation). This grade structure serves several purposes: it recognizes differences in skill and responsibility, it provides a career ladder that gives workers an incentive to improve their skills, and it provides employers with a degree of wage flexibility in managing their labour costs.

The grade structure also creates significant opportunities for abuse, however, and these opportunities have been extensively documented. The most common abuse is the systematic misclassification of workers: placing workers in lower grades than their actual skills and responsibilities warrant, thereby paying them less than the minimum wage applicable to their actual grade. The garment sector in Bangladesh has been particularly prone to this abuse, with a large proportion of workers who have been in the industry for years and have developed significant skills being classified as entry-level workers for wage purposes. The Bangladesh Labour Act provides no effective mechanism for workers to challenge grade classifications, and the labour inspection system has generally not treated grade misclassification as a priority enforcement concern.

A second feature of the grade structure that has attracted significant criticism is the fact that the allowance components of the minimum wage, including house rent, medical, conveyance, and food allowances, are fixed as absolute amounts rather than as percentages of the basic wage. This means that as the basic wage is revised upward, the allowances remain the same in nominal terms and decline as a proportion of the total wage package. The consequence is that over time the wage package becomes increasingly dominated by the fixed allowances and the basic wage component becomes an ever smaller share of the total, with significant implications for workers'

retirement benefits, provident fund contributions, and other entitlements that are calculated as percentages of basic wages rather than total wages.

Outside the ready-made garment sector, the minimum wage structure is considerably more fragmented and less regularly revised. The Minimum Wages Board has fixed minimum wages for dozens of scheduled industries ranging from tea gardens to printing presses to leather workers, but the revision cycle for these industries has been even more infrequent than for the garment sector, and enforcement has been consistently weaker. In some industries, the gazette-notified minimum wage has not been revised in over a decade, and real wages in those industries have been dramatically eroded by inflation. The absence of a national minimum wage applicable to all workers, as recommended by the Labour Reform Commission in its April 2025 report, means that a vast number of workers in unscheduled industries, and essentially all workers in the informal sector, are entirely outside the minimum wage framework.

### 45.3 The EPZ Wage Regime: A Zone of Legal Exception

The Bangladesh Export Processing Zones Authority Act, 1980, and subsequent EPZ legislation have created a regime of labour regulation in the export processing zones that differs significantly from the regime applicable to workers outside the zones. The Bangladesh EPZ Labour Act, 2019, which replaced the earlier EPZ Workers Association and Industrial Relations Act, 2004, and the Bangladesh EPZ Labour Rules, 2022, now provide for minimum wages in the EPZs that are broadly similar to those outside, but the institutional mechanisms for wage-setting, dispute resolution, and worker representation in the EPZs have historically been significantly weaker than in the mainstream labour market.

The Workers Welfare Association (WWA) system established under the 2004 legislation and continued under the 2019 Act was widely criticized by trade unions and labour rights organizations as a mechanism for excluding genuine independent trade unions from the EPZs while creating the appearance of worker representation. The WWA elections, which were held under the supervision of the BEPZA, were criticized as procedurally flawed and structurally biased in favour of management-friendly worker representatives. The Bangladesh EPZ Labour Act, 2019, introduced provisions for Workers Welfare Associations with somewhat more extensive rights than the previous system, but independent trade unions remained excluded from the zones, and the wage-setting process in the EPZs continued to be shaped by the same dynamics of employer dominance and state complicity that characterized the mainstream sector.

The legal separation of EPZ workers from mainstream labour law is philosophically and constitutionally problematic. If the constitutional principle of equality before the law means anything, it should mean that workers in EPZs have the same fundamental rights as workers elsewhere, including the right to organize in independent trade unions and the right to have their wages determined through a genuinely representative tripartite process. The maintenance of a separate and less favorable labour rights regime in the EPZs as an incentive for foreign investment represents precisely the kind of competitive deregulation, or race to the bottom, that the ILO's decent work agenda and the human rights approach to labour law are designed to prevent. The argument that EPZ investors require this exception as a condition of investment is an empirical claim of questionable validity, since evidence from comparable countries suggests

that investors are primarily motivated by infrastructure, political stability, and market access rather than by the absence of independent trade unions.

## 45.4 The Minimum Wage Board Process: Tripartism in Practice

The formal tripartism of the Minimum Wages Board conceals a process that has consistently been criticized as undemocratic, non-transparent, and biased against workers. An examination of the specific wage-setting process that led to the BDT 12,500 minimum wage for garment workers in November 2023 is instructive in this regard, because it reveals the structural dynamics that have characterized the MWB process across multiple wage-setting rounds.

The formal process for minimum wage revision begins when the government constitutes the Minimum Wages Board and requests it to investigate and advise on the minimum wage for a particular sector. The Board is required under the Act to collect data on the cost of living, productivity, profitability, and other relevant factors, and to consult with representatives of workers and employers before making its recommendation. In practice, the information-gathering process has been consistently deficient: the Board has relied heavily on data provided by the employers' associations and has not independently commissioned the kind of rigorous living wage research that would be necessary to set an evidence-based wage floor.

The worker representatives on the Board have consistently been appointed from union federations with close ties to the ruling political party, rather than from the independent unions that represent the actual interests of rank-and-file garment workers. In the 2023 wage revision, the worker members appointed to the Board accepted a settlement of BDT 12,500 that was far below the BDT 23,000 demanded by the major independent garment unions, including the Bangladesh Garment and Industrial Workers Federation led by Kalpona Akter and the affiliated unions of IndustriALL Bangladesh Council. The perception among workers that the Board's tripartite process was rigged, that the worker representatives were not genuinely representative and had accepted a settlement that served the interests of employers and the government rather than the interests of the workers they nominally represented, was a major factor in the explosive anger that fueled the October and November 2023 protests.

The contrast with Cambodia's minimum wage system, which was instituted following labor unrest and international pressure in 2013, is instructive. As documented in the Cornell Global Labour Institute's February 2025 policy brief, Cambodia established an annual minimum wage review mechanism for the garment sector, with a tripartite Labour Advisory Committee required to meet each year to set the minimum wage, taking into account a range of social and economic criteria. Although Cambodia's system is also far from perfect, the annual review mechanism has produced significantly more regular and more adequate wage adjustments than Bangladesh's five-year (now three-year) cycle, and the more frequent revision process has maintained a degree of political accountability that the infrequent Bangladeshi process lacks.

## 45.5 Enforcement of Minimum Wages: The Gap Between Law and Reality

The enforcement of minimum wage legislation is the critical link between the law on paper and the law in practice, and in Bangladesh this link has been consistently weak, underfunded, and

subject to systematic corruption. The Department of Inspection for Factories and Establishments (DIFE), which is the primary enforcement body for labour standards including minimum wages, has been chronically understaffed relative to the scale of the sector it is required to oversee.

The DIFE has roughly 880 inspectors for approximately 30,000 to 40,000 registered establishments, a ratio of approximately one inspector for every 35 to 45 factories. This ratio is inadequate by any international standard, and it means that the great majority of factories receive inspections at most once every few years, creating ample opportunity for non-compliance to go undetected. Moreover, the DIFE inspection system has been widely criticized for corruption: factory owners who receive advance notice of inspections are able to prepare temporary compliance measures that are removed after the inspector has left, and inspectors with inadequate salaries may be susceptible to inducements from employers seeking to avoid enforcement action.

The legal remedies available to workers whose employers pay below the minimum wage are also inadequate. A worker who has been underpaid can file a complaint with the Labour Court under Section 128 of the Act, and the employer is liable to pay the underpaid wages plus a fine. But the Labour Court system is chronically overburdened, and cases can take years to resolve. The practical barriers to litigation for low-income workers, including the cost of legal representation, the risk of employer retaliation, and the time and stress of court proceedings, mean that very few workers actually exercise their legal right to claim underpaid wages. The class action mechanisms that exist in some other jurisdictions, which allow unions or representative bodies to bring collective claims on behalf of large numbers of underpaid workers, are not available in their full form under Bangladeshi labour law, though representative claims through the Labour Courts are theoretically possible.

The Bangladesh Labour (Amendment) Ordinance, 2025, introduced some improvements to the wage enforcement framework, including enhanced penalties for wage violations and provisions for more regular inspections. But the fundamental structural problem of inadequate inspection capacity and inadequate judicial resources remains unaddressed, and without a substantial increase in investment in the enforcement infrastructure, the improved substantive provisions of the 2025 Ordinance will remain largely unenforced.

### 45.6 The Annual Increment System and Its Inadequacy

One of the distinctive features of the wage structure in Bangladesh's garment sector is the provision for annual wage increments within the grade structure. Following the 2013 amendment to the Bangladesh Labour Act, employers in the garment sector are required to increase the basic wages of their workers by five percent per year, regardless of economic performance or profitability. The 2022 amendment to the Bangladesh Labour Rules introduced the same five percent annual increment requirement for workers in other covered industries. The Bangladesh Labour (Amendment) Ordinance, 2025, maintained the five percent annual increment requirement while introducing the three-year minimum wage revision cycle described above.

The annual increment system is a genuine improvement over a system in which wages could remain fixed for years at a time, but its adequacy as an inflation-protection mechanism depends

critically on the relationship between the increment rate and the rate of inflation. In 2022 and 2023, when Bangladesh's annual inflation rate exceeded nine percent, a five percent increment meant a real wage cut. The 2025 Ordinance requires that the three-yearly wage revision should take into account inflation and GDP growth, which represents a normative improvement, but the vague requirement to take into account inflation does not guarantee that wage revisions will actually keep pace with the cost of living.

The RMG sector's increment structure under the 2023 minimum wage decision provides for a nine percent annual increment as part of the overall wage package, which was a slight improvement over the previous five percent rate but still fell short of inflation in the years immediately following. The discrepancy between the employer's legal obligation to pay an annual increment and the frequent failure to actually pay it is also a significant enforcement problem: the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) reported that a small number of factories had failed to implement even the revised minimum wage by October 2024, demonstrating the gap between legal requirements and factory floor reality.

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## CHAPTER FORTY-SIX: THE OCTOBER 2023 WAGE MOVEMENT: CONSTITUTIONAL CRISIS, STATE VIOLENCE, AND THE SUPPRESSION OF WORKER AGENCY

### 46.1 The Context: A Decade of Structural Wage Injustice

The events of October and November 2023, when garment workers across Bangladesh's major industrial zones launched the most significant labour uprising in a decade, did not emerge from nowhere. They were the culmination of a decade of structural wage injustice, intensified in the years immediately preceding by the combination of stagnant nominal wages, rapidly rising inflation, and a global economic slowdown that had reduced demand for Bangladeshi garments. To understand the constitutional and human rights dimensions of what occurred, it is necessary first to understand the material conditions that made workers' anger so explosive.

The minimum wage for entry-level garment workers had been set at BDT 8,000 in 2018. Between 2018 and 2023, Bangladesh experienced annual inflation of approximately seven to nine percent per year, with particularly sharp increases in food prices, fuel costs, and house rents in Dhaka and Gazipur, the major garment production centres. By 2023, the real value of the BDT 8,000 wage was substantially below its 2018 value: research by the Asia Floor Wage Alliance cited in the November 2023 Amnesty International report found that garment workers were consuming fewer calories than the government's own poverty-level calorie standard, a finding that testified to conditions of acute nutritional deprivation. Workers were borrowing at high interest rates to meet basic expenses including food, rent, and medical care for their children. The surveys conducted by BRAC and other research organizations documented that a significant proportion of garment workers were in a state of debt bondage to informal moneylenders, unable to repay loans that had been taken to survive periods of reduced earnings.

Against this background of material deprivation, the demand for BDT 23,000 as the minimum wage was not a radical or unreasonable demand. As noted above, the Bangladesh Institute of Labour Studies had calculated a living wage of BDT 33,368, meaning that even the workers' demand of BDT 23,000 was substantially below the independently calculated living wage for the Dhaka metropolitan area. Trade unions based their demand of BDT 23,000 on calculations of the actual cost of food, rent, clothing, healthcare, education, and transportation for a family of four, demonstrating that the demand was grounded in evidence rather than mere aspiration.

The wage negotiation process that preceded the October 2023 protests was, as the preceding analysis of the MWB indicates, deeply flawed. The process had begun formally in April 2023, when the government constituted the Minimum Wages Board for the garment sector. But the Board's proceedings were characterized by the exclusion of genuinely representative worker organizations, the domination of employer associations, and the effective predetermination of the outcome. Workers in the factories had no direct voice in the process; the worker members of the Board did not represent the actual views of the rank-and-file workforce; and the Board's data collection and analysis were inadequate as a basis for a living wage determination. The offer of BDT 10,400 from BGMEA and the Board's eventual recommendation of BDT 12,500, representing an increase of approximately fifty-six percent from the 2018 wage, was framed by the government as a generous settlement. Workers and independent unions rejected it as utterly inadequate given the inflation that had occurred since 2018.

### 46.2 The Events of October and November 2023: A Documentary Account

The strikes and protests that began on October 23, 2023, rapidly spread across the major garment production centres of Dhaka, Gazipur, Ashulia, Savar, Narayanganj, and Mirpur. The scale of the action was extraordinary: by the end of October, over 600 garment factories had shut down, representing a very substantial proportion of the active industry. Workers marched in the streets, blocked roads and highways, and gathered in large numbers at factory gates to prevent workers who had not yet joined the action from entering.

The nature of the protests was primarily peaceful, as documented by numerous independent observers, journalists, and international human rights organizations. Workers carried banners and placards, chanted demands for BDT 23,000, and organized themselves through WhatsApp groups and other communication channels that allowed rapid mobilization and coordination. The protests reflected a genuine, spontaneous, and broadly representative expression of worker grievance: they were not orchestrated by a single union federation or political party, but emerged from the accumulated anger of millions of workers who felt that the formal wage-setting process had failed them.

The government's response to the protests was characterized by an escalating use of force that the evidence demonstrates was unjustified by any genuine threat to public order. The deployment of the police and the Rapid Action Battalion (RAB) to industrial areas around Gazipur, Ashulia, and Savar in late October was accompanied by the use of tear gas, rubber bullets, and, critically, live ammunition against crowds of protesting workers. Between October 30 and November 8, 2023, at least four workers were killed: Angur Bala was shot in Gazipur on October 30; Abdul Awal was killed in Mirpur on November 4; a third worker was killed in Konabari on November

4; and Jalal Uddin, 42 years old, was shot in the stomach by police and died at Dhaka Medical College on November 12. Hundreds of workers were injured, including many with serious gunshot wounds.

The government's justification for these killings was that workers had engaged in vandalism, had blocked roads, and had attacked factories. The investigation conducted by Amnesty International, published in December 2023, documented that the use of firearms against workers was disproportionate and potentially unlawful, constituting the use of lethal force in circumstances that did not meet the standards set by international human rights law, specifically the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Basic Principles permit the use of firearms only when strictly necessary to protect life, and not as a means of dispersing protests, however disruptive those protests may be. The shooting of workers in circumstances where the immediate threat to the lives of police officers was not established constitutes, on the evidence, a violation of the right to life under Article 32 of the Constitution of Bangladesh and under Article 6 of the International Covenant on Civil and Political Rights.

### 46.3 The Criminalization of Protest: Legal Terror as Labour Discipline

The most sustained and insidious dimension of the state's response to the 2023 wage protests was not the killings themselves, horrifying as those were, but the systematic use of the criminal law to suppress worker organizing and to punish workers for exercising their constitutional rights to protest and to petition the government. The scale of the criminal proceedings instituted against workers was extraordinary: according to Amnesty International's April 2024 report, at least 35 criminal cases were filed against garment workers in connection with the protests, with the First Information Reports (FIRs) naming approximately 161 individual workers and referring to between 35,900 and 44,450 unnamed workers in language that effectively created a blanket threat hanging over tens of thousands of people.

The charges contained in these FIRs included vandalism, unlawful assembly, obstruction of government duties, assault, and in some cases attempted murder. Many of the charges were filed not by the police acting on their own initiative but by factories: 25 of the 35 cases reviewed by Amnesty International were filed by factories believed to supply major international garment brands. The use of factory-initiated criminal complaints as a mechanism for disciplining workers who had participated in wage protests represents a troubling intersection of private economic power and state criminal law enforcement, in which the coercive apparatus of the state was effectively weaponized on behalf of employers against their workers.

The naming of tens of thousands of unnamed workers in FIRs is a well-established technique of what might be called legal terror: the creation of a legal threat so broad and so vaguely defined that virtually any worker who participated in protests could be arrested at any time, used as a mechanism for creating pervasive fear and preventing further organizing. As Aamin Haq, a Bangladeshi labour activist interviewed by Amnesty, described the practical effect: year after year, workers who face these charges must appear in courts to maintain their bail, losing wages in the process, living under the constant threat that a missed appearance could lead to

imprisonment, and unable to continue their organizing activities without the constant shadow of criminal liability.

The constitutional analysis of this use of criminal law against protesting workers must begin with Article 37 of the Constitution of Bangladesh, which guarantees the right of every citizen to assemble and to participate in public meetings and processions. This right is subject to reasonable restrictions in the interests of public order, but the restrictions must be reasonable and must be prescribed by law. The use of criminal charges of unlawful assembly and obstruction against workers who were participating in peaceful wage protests, without any specific evidence of individual acts of violence or property damage, is difficult to reconcile with Article 37. The broad and undifferentiated application of criminal charges to tens of thousands of unnamed workers, based on their mere presence in areas where protests were occurring, is a denial of the principle of individual criminal liability that is fundamental to any rule of law system.

Article 38 of the Constitution guarantees the right of every citizen to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of public order or morality. The right to form and join trade unions is specifically protected by Article 38, and it is meaningfully connected to the right to take collective action, including strike action and protest action, in support of trade union demands. The systematic prosecution of union leaders and activists in connection with the 2023 protests represented a direct interference with the exercise of rights protected by Article 38, and several of the prosecuted individuals were specifically targeted because of their roles as union organizers and advocates.

The International Labour Organization's Committee on Freedom of Association, which monitors compliance with ILO Conventions 87 and 98 on freedom of association and collective bargaining, has consistently held that the arrest and prosecution of workers for participating in trade union activities or in lawful strikes and protests violates the fundamental principles of freedom of association. In its communications with Bangladesh, the Committee has requested information about the criminal proceedings against workers and union leaders arising from the 2023 protests and has called on Bangladesh to ensure that the proceedings are dropped. Bangladesh's commitments under the fundamental ILO Conventions, which it has ratified, create an international law obligation to respect the rights of workers to organize and to protest without criminal sanction.

## 46.4 The Political Economy of the 2023 Wage Decision: Brands, Buyers, and the Architecture of Complicity

The events of October and November 2023 cannot be fully understood as a domestic Bangladeshi story. They are also a story about the global garment supply chain, about the relationship between the wages paid to Bangladeshi garment workers and the pricing practices of the global brands that source from Bangladesh, and about the moral and legal responsibilities of those brands for the labour conditions in their supply chains.

The Clean Clothes Campaign, the Worker Rights Consortium, and other international labour rights organizations have consistently argued that the poverty wages paid to Bangladeshi garment workers are not an inevitable consequence of Bangladesh's low productivity or low per-

capita income, but are a consequence of the purchasing practices of global brands that systematically underpay Bangladeshi suppliers, squeezing supplier margins to the point where those suppliers cannot afford to pay wages above the subsistence level. The margins available to Bangladeshi garment factories, after paying for raw materials, energy, factory space, and compliance costs, are typically in the range of five to eight percent of the export price, and it is from this thin margin that wages must be paid. When global brands respond to economic downturns by cutting their purchasing prices or by transferring orders to lower-cost suppliers, they are directly reducing the financial space within which Bangladeshi employers can afford to raise wages.

The November 2023 letter from the Clean Clothes Campaign to 45 major fashion and sportswear brands, including H&M, Zara, Next, Gap, and others, made precisely this argument: these brands, which had made public commitments to support living wages in their supply chains, had failed to take meaningful action either to ensure that the wage revision process produced a genuinely adequate outcome or to protect workers from the violent repression that followed. The response of most brands was either silence or a statement of concern that fell far short of the concrete action required: using their leverage with suppliers to ensure that criminal charges against workers were dropped and that dismissed workers were reinstated.

The legal implications of this complicity are increasingly significant in light of the evolution of mandatory human rights due diligence legislation. The EU Corporate Sustainability Due Diligence Directive, adopted in June 2024 and analyzed in Part Five of this work in the OSH context, creates legal obligations for large EU companies to identify, prevent, mitigate, and account for human rights and environmental impacts in their value chains. The systematic payment of poverty wages, the support for or acquiescence in the violent suppression of workers demanding higher wages, and the filing of criminal charges against workers for exercising their right to protest all constitute adverse human rights impacts that are now within the scope of mandatory due diligence obligations for EU-headquartered brands sourcing from Bangladesh. The implications of this Directive for the governance of the Bangladesh garment supply chain are profound, and they will be analyzed in detail in the discussion of supply chain accountability in Part Twelve of this work.

### 46.5 The Political Transition of 2024 and the New Labour Governance Framework

The political transition of August 2024, which saw the resignation of Prime Minister Sheikh Hasina and the installation of an interim government led by Muhammad Yunus, created a new political context for labour rights in Bangladesh. The Hasina government's record on labour rights was deeply problematic: beyond the events of 2023, it had presided over a period of systematic repression of independent trade union organizing, close alliance with the garment manufacturers' associations, and consistent failure to enforce labour standards. The new interim government, which drew on the support of a broad coalition that included labour rights advocates, civil society organizations, and student activists, made significant commitments to labour law reform.

The Labour Reform Commission established by the interim government, chaired by Syed Sultan Uddin Ahmed of the Bangladesh Institute of Labour Studies, produced its report in April 2025

with recommendations for comprehensive reform of Bangladesh's labour law framework. Among the Commission's most important recommendations on wages were: the establishment of a three-year minimum wage revision cycle with mandatory consideration of inflation and GDP growth; the introduction of a national minimum wage covering both formal and informal sector workers; the raising of annual increments to reflect inflation more accurately; and the reform of the Minimum Wages Board process to ensure genuine representation of independent worker organizations.

The Bangladesh Labour (Amendment) Ordinance, 2025, enacted in November 2025, implemented a number of these recommendations, though the reform was incomplete and certain issues remained unresolved. The three-year wage revision cycle was introduced, replacing the five-year cycle. Provisions were added requiring consideration of inflation and GDP growth in wage-setting. The Ordinance also introduced mandatory provident funds for factories with at least 100 workers, enhanced penalties for wage violations, and prohibitions on forced overtime and other coercive practices. These were meaningful improvements, but the Commission's recommendation for a national minimum wage covering informal sector workers was not adopted, leaving ninety percent of the workforce, in the Commission's own assessment, outside the protection of any minimum wage framework.

### 46.6 Constitutional Dimensions: The Right to a Living Wage under the Bangladesh Constitution

The question of whether the Constitution of Bangladesh creates enforceable rights to a living wage has not been definitively resolved by the courts, but there is substantial doctrinal material that supports the claim that it does. The analysis requires attention to both the Fundamental Rights provisions and the Fundamental Principles of State Policy, as well as to the growing body of constitutional jurisprudence on the judicial enforceability of social and economic rights.

Article 20 of the Constitution establishes the principle of equal wages for equal work, which is directly relevant to the question of gender-based wage discrimination in the garment sector. Article 34 prohibits forced labour, which is relevant to conditions of debt bondage and coercive work practices. But the most directly relevant provisions are in Part II, the Fundamental Principles of State Policy.

Article 15 of the Constitution provides that it shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens: the provision of the basic necessities of life, including food, clothing, shelter, education and medical care; the right to work, that is the right to guaranteed employment at a reasonable wage, having regard to the quantity and quality of work; the right to reasonable rest, recreation and leisure; and the right to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases. Article 20(1) declares work to be the right and duty of every citizen capable of working.

These provisions collectively create what might be characterized as a constitutional commitment to the right to work at a reasonable wage, and to the provision of the basic necessities of life. The question of whether this commitment is judicially enforceable as a fundamental right has been addressed in a number of cases, though the jurisprudence remains underdeveloped. The High Court Division has in some cases been willing to treat the Fundamental Principles as interpretive tools for construing other provisions of the Constitution and of legislation, and has in some public interest litigation cases issued directions based on the Principles even while formally acknowledging their non-justiciable character.

The Indian Supreme Court's jurisprudence, which has developed the right to livelihood as an aspect of the right to life under Article 21 of the Indian Constitution, provides a potentially relevant comparative model. In cases such as Olga Tellis v. Bombay Municipal Corporation (1985) and Consumer Education and Research Centre v. Union of India (1995), the Indian Supreme Court held that the right to life includes the right to livelihood, and that an employment relationship that fails to provide a worker with the means for a dignified existence violates the right to life. The Bangladesh High Court Division has not yet fully adopted this approach, but the constitutional text and the weight of comparative jurisprudence support the development of a similar doctrine in Bangladesh.

The critical doctrinal question is whether, if the courts were to recognize the right to a living wage as an aspect of the constitutional right to life, or as a directly enforceable Fundamental Principle, this would empower them to strike down minimum wage decisions that fall short of the living wage standard or to order the government to revise the minimum wage upward. This is a genuinely difficult constitutional question, involving considerations of separation of powers and judicial competence in economic matters, as well as the practical question of whether courts are well-placed to determine what constitutes an adequate living wage. But the difficulty of these questions should not preclude the courts from engaging with them; the consistent failure of the political process to deliver adequate wages, as demonstrated by the history reviewed in this Chapter, provides a compelling reason for judicial engagement with the constitutional dimensions of wage justice.

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## CHAPTER FORTY-SEVEN: THE LIVING WAGE CONCEPT: THEORY, EVIDENCE, AND THE REFORM AGENDA FOR WAGE ADEQUACY

### 47.1 Defining the Living Wage: Conceptual Clarity in a Contested Field

The concept of the living wage, which has become increasingly central to debates about wage adequacy in Bangladesh and globally, is subject to competing definitions and methodologies that reflect underlying disagreements about what a wage is for and what obligations employers and states have to ensure that wages are adequate. It is therefore important to begin with a careful conceptual analysis before turning to the evidence on living wage levels in Bangladesh and the reform agenda for achieving living wage outcomes.

The most common definition of the living wage, adopted by the Global Living Wage Coalition and operationalized through the Anker methodology, defines it as the remuneration received for a standard working week by a worker in a particular place sufficient to afford a decent standard of living for the worker and their family. Elements of a decent standard of living include food, water, housing, education, healthcare, transportation, clothing, and other essential needs including provision to cover unexpected events. This definition captures several important features of the living wage concept: it is geographically specific, reflecting actual costs in the place where the worker lives; it is family-based, reflecting the reality that wages must support dependents as well as the worker; it is needs-based, reflecting actual costs rather than any arbitrary threshold; and it is prospective rather than descriptive, stating what wages should be rather than what they are.

This Anker-based definition contrasts with several alternative definitions that are sometimes used in policy discussions. The subsistence wage, which is sometimes conflated with the living wage but should be distinguished from it, is the wage necessary to maintain the worker's physical functioning as a productive entity: sufficient food, shelter, and healthcare to enable the worker to come to work and to perform the required labour. The subsistence wage is a lower standard than the living wage because it does not include provision for the worker's social and cultural participation, for education and development, or for adequate care of dependents. A wage at the subsistence level maintains the worker as a productive input but denies the worker as a full human being.

The decent wage is a concept associated with the ILO's decent work agenda and is sometimes used interchangeably with the living wage but has a somewhat different emphasis: it focuses not only on the level of the wage but on the conditions under which it is paid, including regularity and timeliness of payment, freedom from arbitrary deductions, and compliance with all applicable legal requirements. The concept of a fair wage is broader still, encompassing considerations of distributive justice, the relationship between wages and profits, and the equitable distribution of the gains from productivity growth between workers and capital owners.

For the purposes of this analysis, the living wage will be understood to require, at a minimum, that the wage paid to a full-time worker is sufficient to meet the basic needs of the worker and her household at a level consistent with human dignity, as defined by reference to actual costs in the relevant location and taking into account the family structure typical of workers in the relevant industry. This is a demanding standard, and it goes significantly beyond the current BDT 12,500 minimum wage in Bangladesh, which falls short of every credible estimate of the living wage for Dhaka.

### 47.2 Living Wage Evidence in Bangladesh: What Workers Actually Need

The evidence on living wage levels in Bangladesh is extensive and consistent: every credible methodology and every credible estimate produces a living wage figure substantially above the current BDT 12,500 minimum wage, confirming that the minimum wage is a poverty wage rather than a living wage. The following survey of the major evidence sources illustrates this conclusion and also illuminates the sources of disagreement about the precise living wage figure.

The Anker Research Institute, which maintains living wage benchmarks for a growing number of countries and regions, calculated a living wage for Dhaka of approximately BDT 26,000 to 30,000 per month as of 2024, depending on the assumed household structure and the treatment of allowances paid by employers in addition to the basic wage. The Anker methodology calculates the cost of a nutritious diet based on local food prices and national dietary guidelines, the cost of adequate housing including utilities, and the cost of other essential non-food items, and adds these costs together to produce the total living wage. The Anker estimate for Dhaka is significantly higher than the current minimum wage, but is the lowest of the major living wage estimates for Bangladesh.

The Bangladesh Institute of Labour Studies (BILS) has calculated a living wage for garment workers of BDT 33,368, based on its own analysis of the costs of basic needs for a family of four in the Dhaka metropolitan area. The BILS calculation reflects the particularly high costs of living in Dhaka, where rents, food prices, and transportation costs have increased significantly in recent years, and where the typical garment worker's household includes both the worker and non-working family members who depend on the wage for their subsistence.

Trade union organizations have typically demanded a minimum wage of BDT 23,000, which is below both the Anker and BILS estimates but which unions have argued is the politically achievable minimum necessary to bring workers above the poverty line. The gap between the trade union demand and the independently calculated living wage reflects a strategic concession: unions have recognized that demanding the full living wage in a single step may be politically impossible and that a phased approach, moving from BDT 8,000 to BDT 23,000 in the first step, is more likely to produce an immediate improvement in workers' material conditions.

The gap between the current minimum wage of BDT 12,500 and any of these living wage estimates is substantial. If we take the BILS figure of BDT 33,368 as the benchmark, the current minimum wage is approximately thirty-seven percent of the living wage. Even against the trade union demand of BDT 23,000, the current minimum wage is approximately fifty-four percent of what unions consider the minimum needed. Against the Anker methodology estimate of approximately BDT 28,000, the current minimum wage is approximately forty-five percent of the living wage. By any of these measures, Bangladesh's garment sector minimum wage represents a poverty wage that denies workers the means to live in dignity.

The implications of this evidence for the reform agenda are clear: the minimum wage must be substantially increased, through a phased program that brings it up to the living wage level over a defined period, with annual adjustments for inflation. The 2025 Ordinance's three-year revision cycle is an improvement, but it is not sufficient to close the gap between the current minimum wage and the living wage within any reasonable time frame. If the minimum wage is revised in 2026 to, say, BDT 17,000, a figure that might be achievable given employer and government resistance, it would still be approximately fifty to sixty percent of the independently calculated living wage, and the three-year revision cycle would mean that the next adjustment would not occur until 2029.

### 47.3 The Living Wage and Supply Chain Governance: Brand Responsibility

The debate about the living wage in Bangladesh is ultimately a debate about who bears the cost of improving wages. Employers and their associations have consistently argued that they cannot afford to pay higher wages without corresponding increases in the prices they receive from global brands, and that higher wages without price increases will reduce their competitiveness and lead to a loss of orders and jobs. This argument has force as a description of the immediate financial constraints facing individual employers, but it is incomplete as an analysis of the political economy of the garment supply chain, because it treats the purchasing prices offered by global brands as an exogenous constraint rather than as a choice made by powerful actors who are themselves subject to moral and legal obligations.

The evidence on the capacity of global brands to absorb higher wages in Bangladesh is unambiguous: the major global brands that source from Bangladesh are highly profitable companies with substantial financial capacity to absorb increases in supplier wage costs without any significant impact on their profitability. Research by the Worker Rights Consortium and others has demonstrated that a wage increase sufficient to bring Bangladesh garment workers to the trade union demand of BDT 23,000 would increase the retail price of a typical garment sold in Europe or North America by less than one percent, a price increase so small as to be imperceptible to consumers and negligible in terms of brand profitability.

The strategic leverage of global brands in the wage debate is also significant. Brands that publicly commit to supporting living wages in their supply chains, as many major brands have done in their corporate responsibility statements, and that then fail to ensure that their purchasing practices provide the financial space for suppliers to pay living wages, are engaging in a form of greenwashing that is increasingly being scrutinized by regulators, investors, and civil society organizations. The EU Corporate Sustainability Due Diligence Directive, the emerging mandatory living wage requirements in several European jurisdictions, and the growing body of litigation on supply chain due diligence create an increasingly compelling set of incentives for brands to move from rhetorical commitment to living wages to actual practice.

The concept of the living wage in supply chain governance has also been developed in the context of multi-stakeholder initiatives, including the Fair Labor Association, the Ethical Trading Initiative, and the Bangladesh Accord's successor body, the International Accord for Health and Safety in the Textile and Garment Industry. The International Accord, which was analyzed in Part Five of this work in the OSH context, has demonstrated that binding, enforceable agreements between brands and trade unions can achieve meaningful improvements in labour standards; the question is whether a similar model can be developed for wages, requiring brands to commit to purchasing prices that enable the payment of living wages and subjecting this commitment to independent monitoring and enforcement.

### 47.4 The National Minimum Wage Question: Including the Excluded

Among the most significant gaps in Bangladesh's current wage regulation framework is the absence of a national minimum wage covering all workers, both formal and informal. The existing system of sector-specific minimum wages, set by the Minimum Wages Board on an industry-by-industry basis, leaves the vast majority of workers outside any minimum wage protection. The informal economy, which by the Labour Reform Commission's own estimate

employs approximately ninety percent of Bangladesh's workforce, has no minimum wage floor at all. Workers in agriculture, domestic service, rickshaw pulling, small-scale retail, and a vast array of other informal occupations are entirely dependent on whatever wage the market produces, which, given the extreme vulnerability of these workers and the absence of any effective collective organization, is frequently at or below the subsistence level.

The Labour Reform Commission's April 2025 report recommended the introduction of a national minimum wage covering both formal and informal sector workers. The Commission's recommendation was based on the recognition that the current exclusion of informal sector workers from minimum wage protection represents a fundamental violation of the principle of equal dignity: workers in the informal sector are no less entitled to wages adequate for a dignified life than workers in the formal sector, and the fact that they lack the organizational capacity to demand higher wages through collective bargaining is a reason for stronger, not weaker, legal protection.

The constitutional basis for a national minimum wage covering informal sector workers is found in the constitutional commitment to the right to work at a reasonable wage and to the provision of the basic necessities of life as fundamental responsibilities of the state. The principle of equal treatment also supports a national minimum wage: if formal sector workers have a legal entitlement to a minimum wage, the denial of the same entitlement to informal sector workers is a form of unequal treatment that requires justification.

The practical challenges of implementing a national minimum wage in the informal sector are substantial. Enforcement in informal settings, where employment relationships are often undocumented, workers are highly mobile, and employers lack formal registration, is far more difficult than in the formal sector. But the difficulty of enforcement does not justify the abandonment of legal protection: it argues for the development of innovative enforcement mechanisms adapted to informal sector realities, including community-based monitoring, presumptions of minimum wage entitlement in ambiguous employment situations, and enhanced remedies for workers who have been underpaid.

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## CHAPTER FORTY-EIGHT: THE WORKERS PROFIT PARTICIPATION FUND: DEMOCRACY, PROFIT-SHARING, AND THE LIMITS OF INDUSTRIAL PARTNERSHIP

### 48.1 Theoretical Foundations: Profit-Sharing, Industrial Democracy, and the Stakeholder Firm

The Workers Profit Participation Fund (WPPF), established under Chapter XV of the Bangladesh Labour Act, 2006, is one of the most philosophically interesting provisions in Bangladesh's labour law, and one of the most consistently violated. To understand what the WPPF is trying to achieve, and why its implementation has failed so comprehensively, it is necessary to engage with the theoretical traditions that gave rise to profit-sharing as a legal obligation.

The idea that workers should share in the profits of the enterprises whose labour they provide has a long philosophical and institutional history. John Stuart Mill, in his Principles of Political Economy (1848), argued that the system of worker profit-sharing represented a form of productive organization superior to both pure wage labour and cooperative ownership, combining the efficiency incentives of individual effort with the distributive justice of shared gains. Mill's analysis was prescient in identifying the incentive effects of profit-sharing: workers who know that they will share in the profits of the enterprise have an incentive to work more productively and to cooperate in improving the enterprise's performance, while workers who receive only a fixed wage have no such incentive and may actually resist productivity improvements if they believe the gains will be captured entirely by employers.

The industrial partnership movement in Britain in the nineteenth century, associated with employers like George Palmer of Huntley and Palmer Biscuits and John Spedan Lewis of the John Lewis Partnership, developed the idea of profit-sharing into practical institutional forms that combined financial participation with worker voice in management. The John Lewis Partnership, in which employees are Partners who share in the profits of the business and who participate in its governance through an elected representative structure, remains the most successful example of a genuine stakeholder enterprise in the British tradition, and it has been the subject of extensive academic analysis as a model of alternative corporate organization.

The legal obligation of profit-sharing, as distinct from voluntary profit-sharing arrangements, reflects a different intellectual tradition: the idea that the legal structure of the corporation creates an obligation to share profits not only with shareholders but with the workers whose labour generates those profits. This idea draws on both the natural law tradition, which holds that workers have a moral entitlement to a fair share of the value they create, and on democratic theory, which holds that the governance of productive institutions should not be solely determined by the owners of capital but should involve the participation of all those whose interests are substantially affected by the enterprise's decisions. The German model of Mitbestimmung (co-determination), under which workers in large enterprises have the right to elect representatives to the supervisory board, represents the most developed expression of this democratic tradition in the field of industrial organization.

The Companies Profits (Workers Participation) Act of 1968, enacted by the Pakistani government of Ayub Khan, was the immediate legislative predecessor of the current WPPF provisions. The 1968 Act reflected the particular political dynamics of late-Ayub Pakistan, in which the military government was seeking to maintain social stability by extending a degree of material benefit to industrial workers without conceding any genuine voice in corporate governance. The mandatory profit-sharing requirement was thus designed from the beginning as a substitute for, rather than a supplement to, worker voice in the enterprise: it was intended to give workers a financial stake in the firm's profitability as a way of aligning their interests with management without giving them any actual power to influence management decisions.

### 48.2 The Legal Structure of the WPPF Under the Bangladesh Labour Act, 2006

Chapter XV of the Bangladesh Labour Act, 2006, Sections 232 to 246, establishes the legal framework for the Workers Profit Participation Fund. The framework has three main

components: the scope conditions that determine which enterprises are required to establish the fund; the contribution requirements that determine how much must be paid into the fund; and the governance and distribution provisions that determine how the fund is managed and how its proceeds are distributed to workers.

Section 232 establishes the scope conditions: Chapter XV applies to companies with paid-up capital of at least BDT one crore (ten million) or fixed assets of at least BDT two crore (twenty million) on the last day of any accounting year. These thresholds effectively exclude small and medium enterprises from the WPPF obligation, limiting its application to larger, more formally organized businesses. The exclusion of smaller enterprises from the WPPF obligation is a significant limitation on its reach, given that a substantial proportion of Bangladesh's garment and manufacturing workers are employed in factories that may not meet the threshold criteria.

Section 234(1)(b) establishes the contribution requirement: companies subject to Chapter XV must pay, within nine months of the close of every financial year, five percent of the net profit of the previous year to the Participation Fund, the Welfare Fund, and the Workers Welfare Foundation Fund, in the ratio of 80:10:10. The five percent contribution is calculated on net profit as defined by the Companies Act 1994, meaning profits after taxes and other legally required charges. The 80:10:10 allocation directs eighty percent of the contribution to the Participation Fund (for direct distribution to workers), ten percent to the Welfare Fund (for collective worker welfare activities), and ten percent to the Bangladesh Workers Welfare Foundation Fund (a government-managed fund for workers across all enterprises).

From the Participation Fund's eighty percent share, two-thirds are to be distributed in cash equally to all eligible workers, and one-third is to be invested on behalf of workers, with the investment proceeds distributed to workers when they leave the enterprise. The equal distribution among all eligible workers, rather than distribution proportional to wages, is an expression of the egalitarian philosophy underlying the WPPF: the idea that all workers, regardless of their position in the enterprise hierarchy, have an equal entitlement to share in the profits that their collective labour generates.

The governance of the Participation Fund and the Welfare Fund is vested in a Board of Trustees consisting of an equal number of representatives nominated by the Collective Bargaining Agent and by the management of the company. This trustee structure, in which workers and management share governance responsibility, is an expression of industrial democratic principles, but its effectiveness depends critically on the genuine representativeness of the CBA and the genuine independence of the worker trustees from management influence. In practice, as the following analysis demonstrates, both conditions are frequently absent.

A worker who has not completed six months of employment with the company during a financial year is not eligible to participate in the fund for that year. This waiting period has been criticized as a mechanism that excludes precisely those workers who are most vulnerable, since workers with less than six months of service are typically newer workers, who tend to be younger, less skilled, and more likely to be female, and who may also be workers who have been deliberately kept below the six-month threshold by employers who hire on short-term contracts to avoid WPPF and other obligations.

## 48.3 The WPPF in Practice: Systemic Non-Compliance and Structural Failure

The gap between the WPPF as a legal obligation and the WPPF as a practical reality is one of the most striking examples of the enforcement failure that characterizes Bangladesh's labour law regime. The evidence of systemic non-compliance with the WPPF provisions is overwhelming, extensively documented, and remarkably unaddressed by the institutions responsible for enforcement.

The Business Standard investigation, drawing on information from the Bangladesh Securities and Exchange Commission (BSEC) and the Workers Welfare Foundation, found that of the approximately 300 companies that had donated to the Workers Welfare Foundation Fund since 2006, out of an estimated universe of tens of thousands of eligible companies, a tiny fraction were in compliance with the mandatory requirement. Of more than 300 publicly listed companies on the Dhaka Stock Exchange, approximately 100 had either not formed the required funds at all or were not managing and distributing them properly. Some companies had set aside funds but had failed to distribute them to workers. Others had formed the funds but had not maintained separate bank accounts as required by law. Still others had not formed the funds at all, simply ignoring the statutory obligation.

The structure of the non-compliance is telling. The largest and most visible companies, those with exposure to international investors, journalists, and regulatory scrutiny, tend to have the highest rates of compliance, while smaller and less visible companies tend to have lower rates. This pattern suggests that the primary driver of compliance is not the threat of regulatory enforcement but reputational concern, and that the enforcement mechanisms are too weak to compel compliance by those who are not already motivated by reputation to comply. The Department of Inspection for Factories and Establishments has authority to investigate WPPF non-compliance and to refer cases to the Labour Court for enforcement, but in practice this authority has been very rarely exercised.

The problem of net profit manipulation deserves particular attention. The WPPF contribution is calculated on net profit as defined by the Companies Act 1994, and this definition creates significant opportunities for manipulation through accounting choices that reduce reported net profit, thereby reducing the WPPF obligation. The deductibility treatment of WPPF contributions for corporate income tax purposes has itself been a source of litigation and controversy: the National Board of Revenue has at various points taken the position that WPPF contributions should be treated as a distribution of profit rather than as a deductible expense, and the New Age article of June 2022 discusses this controversy in detail. If WPPF contributions are non-deductible, the effective cost of compliance to the employer is increased, which may increase the incentive to manipulate reported profits to reduce the obligation.

The controversy over the tax deductibility of WPPF contributions reveals a deeper ambiguity in the WPPF's conceptual foundations. The original Companies Profits (Workers Participation) Act of 1968, as noted above, calculated the contribution on pre-tax profits, treating the WPPF obligation as a claim on profit that ranked ahead of taxation. The Bangladesh Labour Act calculates the contribution on post-tax profits. This change in the tax treatment basis significantly

reduces the size of the contribution and reflects the post-independence legislative tendency to weaken worker protections in the face of employer lobbying.

## 48.4 The Welfare Fund and the Workers Welfare Foundation: Collective Provision and Its Discontents

The ten percent of the WPPF contribution that flows to the Workers Welfare Fund, managed by the enterprise's trustee board, and the ten percent that flows to the Bangladesh Workers Welfare Foundation Fund, managed by the government, represent the collective or public interest dimension of the profit-sharing requirement. These funds are intended to support collective welfare activities: provision of educational scholarships for workers' children, medical assistance for workers and their families, death benefits, and similar collective goods that benefit workers generally rather than being distributed as individual cash payments.

The Bangladesh Workers Welfare Foundation Fund, established under the Bangladesh Workers Welfare Foundation Act, 2006, is a government-managed fund that is intended to provide financial assistance to workers and their families across all enterprises, not only those subject to the WPPF. The Foundation has provided assistance to workers in emergencies including injuries, serious illness, and death, and it has maintained educational scholarship programs. But its resources have been chronically inadequate given the scale of need, and its governance has been criticized for opacity and for the concentration of decision-making power in government officials rather than in representative worker institutions.

The governance problem with the Welfare Fund at the enterprise level is similar to the governance problem with the Participation Fund: the effectiveness of the trustee board depends on the genuine representativeness of the CBA and the independence of the worker trustees. In enterprises without effective trade unions, where management effectively controls the nomination of the worker representatives on the trustee board, the Welfare Fund may be managed in a manner that reflects management preferences rather than worker needs. There is no requirement that the Welfare Fund's accounts be publicly disclosed or subject to independent audit, though the Bangladesh Labour (Amendment) Ordinance, 2025, introduced enhanced transparency and audit requirements as part of its broader governance reforms.

## 48.5 Reforming the WPPF: Towards Genuine Industrial Democracy

The reform agenda for the WPPF must address both the structural inadequacy of the current legal framework and the systematic non-compliance that has made the existing provisions largely ineffective in practice. The following analysis proposes a comprehensive reform program organized around five principles: universality, adequacy, genuine worker control, transparency, and enforcement.

The first principle is universality: the WPPF obligation should be extended to all enterprises above a substantially lower threshold than the current one crore paid-up capital requirement. The Labour Reform Commission's recommendation that the threshold be lowered to cover enterprises with fifty or more workers is a practical and justifiable starting point, recognizing that while truly micro enterprises may lack the administrative capacity to manage a WPPF, enterprises of fifty

workers or more can reasonably be expected to maintain the necessary accounts and governance structures.

The second principle is adequacy: the current five percent of net profit contribution is too low, and the definition of net profit is too manipulable. The contribution should be raised to seven percent, and the definition of net profit should be strengthened to prevent artificial reduction through accounting manipulation. The tax deductibility of WPPF contributions should be confirmed, removing the current uncertainty and reducing the cost of compliance.

The third principle is genuine worker control: the governance of the WPPF should be genuinely controlled by workers, not by management-nominated worker representatives. The trustee board should include workers elected by secret ballot by the whole workforce, not merely CBA nominees, since in many enterprises the CBA may not be genuinely representative of the entire workforce. The accounts and decisions of the trustee board should be subject to annual reporting to the general meeting of the workforce, giving all workers a voice in how their collective funds are used.

The fourth principle is transparency: the WPPF accounts should be subject to mandatory independent audit and the audit reports should be published and submitted to the relevant regulatory authority. Failure to publish WPPF accounts should be treated as a significant regulatory violation subject to enhanced penalties. The publication of WPPF accounts would also provide the data needed for research on the scale of profit-sharing across the economy and for the identification of non-compliant enterprises.

The fifth principle is enforcement: the penalties for WPPF non-compliance should be substantially increased, and the enforcement responsibility should be given to a dedicated unit within the Labour Inspectorate with the capacity and the mandate to conduct systematic compliance audits. The Labour Court jurisdiction over WPPF disputes should be expedited, and class action or representative complaint mechanisms should be developed to allow workers collectively to claim unpaid WPPF entitlements without requiring each individual worker to initiate separate proceedings.

### 48.6 The WPPF and the Broader Question of Worker Ownership

The WPPF, with its provision for the investment of one-third of the workers' Participation Fund share on behalf of workers, implicitly raises the question of worker ownership of enterprises. If the invested share of the WPPF is accumulated over many years, and if the invested funds are used to purchase shares in the enterprise itself, workers may over time acquire a meaningful ownership stake in the enterprise, moving from wage labour towards something approaching co-ownership. This is a genuinely radical possibility that has received insufficient attention in discussions of the WPPF's purpose and potential.

The British political economist James Meade developed an influential analysis of what he called the property-owning democracy, in which all citizens have access to productive assets and thus to income from capital as well as from labour, as an alternative to both socialist collective ownership and pure capitalist private ownership. Meade's work, which influenced Rawls's later

thinking about the proper institutional expression of the difference principle, argued that the fairest and most efficient economic system is one in which property ownership is widely distributed, preventing the concentration of income and power that results from both capitalist private property and state socialist collective ownership. The WPPF's investment component, if developed into a genuine worker ownership mechanism, could contribute to the kind of dispersed property ownership that Meade envisioned.

More radical versions of this idea are found in the work of Rudolf Meidner, the Swedish economist who developed the Wage-Earner Funds proposal in Sweden in the 1970s. Meidner proposed that a portion of corporate profits should be transferred each year to funds controlled by trade unions, which would use them to purchase shares in enterprises, gradually transferring ownership from private shareholders to worker funds. The Meidner plan was never fully implemented, but it represents the most systematic attempt to use the mechanism of mandatory profit-sharing to achieve a gradual socialization of the ownership of productive capital without the disruptions associated with direct nationalization.

The political and economic conditions of Bangladesh in the 2020s are very different from those of Sweden in the 1970s, and the Meidner plan cannot be directly transposed to the Bangladeshi context. But the analytical insight behind the plan, that mandatory profit-sharing can be designed not merely as a welfare supplement to wages but as a mechanism for gradually shifting the ownership of productive capital towards those who create it through their labour, is relevant to the reform of the Bangladeshi WPPF. A reformed WPPF that accumulated worker ownership stakes over time, providing workers with income from capital as well as wages, could make a contribution to the reduction of wealth inequality that goes beyond the immediate distributional effect of cash distributions.

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## CHAPTER FORTY-NINE: PAYMENT SYSTEMS, WAGE PROTECTION, AND THE LAW OF WAGE THEFT

### 49.1 The Law of Wage Payment: Architecture and Analysis

The right to receive wages is obviously meaningless unless the wages are actually paid in the amount, on the time, and in the manner required by law. Bangladesh's labour law contains an extensive set of provisions governing the payment of wages, including the time and method of payment, the permissible and impermissible deductions from wages, and the remedies for non-payment or underpayment. These provisions, contained primarily in Part VI of the Bangladesh Labour Act, 2006 (Sections 119 to 133) and in the Bangladesh Labour Rules, 2015, constitute what might be called the law of wage payment or wage protection.

The basic wage payment obligation is established by Section 119 of the Act, which requires every employer to pay wages to workers at intervals of not more than one month, with payment to be made within seven working days after the end of the wage period in factories or establishments employing fewer than one thousand workers, and within ten working days in larger establishments. Payment is required to be made on a working day, at the workplace or at a

nearby place specified by the employer, and must be made in legal tender. The Act also permits payment by cheque or through bank transfer with the worker's consent.

These provisions, while technically comprehensive, have been consistently violated in practice. Delayed wage payment is one of the most frequently reported labour violations in Bangladesh: workers in garment factories, construction sites, and other formal sector workplaces report regular delays of weeks or even months in receiving their wages, a violation that has devastating consequences for workers who live paycheque to paycheque and who have no savings buffer to absorb delays. The Bangladesh Labour (Amendment) Ordinance, 2025, enhanced the penalties for late wage payment, but the enforcement mechanism remains weak and the practical deterrent effect of the enhanced penalties is uncertain.

The digitization of wage payments, which has been promoted by the government and by international development agencies as a mechanism for improving wage payment regularity and reducing the scope for corruption and wage theft, has made some progress in the garment sector. The major mobile financial services providers, including bKash and Nagad, have developed payroll disbursement services that allow employers to pay wages directly to workers' mobile accounts, providing a digital trail that makes late payment and underpayment more visible and harder to conceal. By 2024, a significant and growing proportion of garment workers were receiving their wages through mobile financial services, and the evidence suggests that digital wage payments are associated with improved payment regularity. However, digital payment systems also create new vulnerabilities: workers with limited digital literacy may find it difficult to verify that they have received the correct amount, and the financial services firms that process wage payments have interests that may not always align with those of workers.

### 49.2 Permissible and Impermissible Deductions: The Law and Its Evasion

Section 125 of the Bangladesh Labour Act, 2006, establishes the permissible deductions from wages: fines for defined breaches of conduct, subject to a cap of not more than one percent of the worker's monthly wage per breach; deductions for absence from work; deductions for loss or damage caused by the worker's negligence; house rent deductions for employer-provided accommodation; deductions for recovery of advances or overpayments; and deductions for contributions to the WPPF, provident fund, and welfare fund. All deductions must be authorized by the Act, and any unauthorized deduction constitutes an offence.

The fine system authorized by Section 125 has been widely criticized as a mechanism for arbitrary deduction from workers' wages under the guise of disciplinary penalties. The conditions under which fines may be imposed, specified in Sections 26 to 31 of the Act, require a formal procedure including written notice, an opportunity for the worker to make representations, and recording of the decision. But in practice, fines are frequently imposed informally, without following the required procedure, and workers who challenge the imposition of fines risk dismissal or other forms of management retaliation. The requirement that fines be credited to the Welfare Fund rather than retained by the employer is frequently ignored.

The concept of wage theft, which has become prominent in labour law scholarship in the United States and is increasingly recognized in international discourse, provides a useful analytical

frame for understanding the systematic underpayment of wages that characterizes much of Bangladesh's formal sector. Wage theft includes not only the outright non-payment of wages but also the payment of wages below the legal minimum, the unauthorized deduction of wages, the failure to pay legally required overtime premiums, the failure to pay the annual increment and festival bonus, and the appropriation of workers' WPPF entitlements by employers who fail to comply with the fund establishment and contribution requirements.

The scale of wage theft in Bangladesh's garment sector has been documented in numerous investigations by labour rights organizations. The Worker Rights Consortium's research, conducted through factory audits and worker interviews, has found systematic patterns of minimum wage violations, particularly through grade misclassification and through the payment of allowances that should be paid in addition to the minimum wage as part of the minimum wage calculation. The Asia Floor Wage Alliance's factory surveys have documented widespread failure to pay the legally required five percent annual increment. And the BSEC investigation documented that approximately one hundred publicly listed companies had either not formed the required WPPF or were not properly managing and distributing its funds.

### 49.3 The Bonus System: Legal Framework and Political Economy

The festival bonus, paid at the time of the Eid-ul-Fitr and Eid-ul-Adha festivals, is a legally required payment under the Bangladesh Labour Act, 2006. Section 132 of the Act requires every employer to pay a festival bonus of at least one-third of the worker's monthly basic wages as a festival bonus at each of the major religious festivals. For garment workers, who typically work for employers who observe both the main Eid festivals, this means two festival bonuses per year, each equivalent to one-third of the monthly basic wage.

The festival bonus is distinct from the performance bonus, which is not legally required but is common in some industries as a discretionary payment linked to enterprise performance. The annual bonus paid under the Payment of Bonus Act, which was a colonial-era provision, has been incorporated into the Bangladesh Labour Act framework and provides for an additional annual bonus of at least one month's basic wages in profitable enterprises, though this provision has been unevenly interpreted and enforced.

The political economy of the bonus system in Bangladesh is significant. The festival bonus is a major financial event for garment workers, representing a payment equivalent to two additional months' basic wages per year, spread over the two Eid festivals. For workers whose monthly wages are barely sufficient to meet daily needs, the festival bonus provides an opportunity to pay off accumulated debts, purchase clothing and gifts for family members, and remit money to villages. The importance of the bonus to workers' social and family lives creates a particular form of vulnerability: workers who are afraid of losing their jobs or being blacklisted before the Eid festival will be reluctant to take industrial action or to make wage demands in the weeks before the bonus payment, giving employers a structural advantage in the labour relations calendar.

The failure to pay the festival bonus is a recurring form of wage theft that has been consistently documented. Factories that face financial difficulties, that are closing down, or that are simply

choosing not to comply with the law, frequently fail to pay the festival bonus, leaving workers who have anticipated the payment and made financial commitments based on it in acute financial distress. The legal remedy for non-payment of the festival bonus is a complaint to the Labour Court, but the delays involved in Labour Court proceedings make this remedy practically useless for workers who need the money immediately to meet obligations that are due at the festival.

### 49.4 Wage Payment in the Informal Economy: The Absence of Legal Protection

The analysis of wage payment provisions above applies primarily to formal sector workers covered by the Bangladesh Labour Act, 2006. The vast majority of Bangladesh's workforce, employed in the informal economy, agriculture, domestic service, and a wide range of self-employed and casual labour activities, are largely outside the scope of these provisions and depend on contractual arrangements, social norms, and customary practices to determine when and how they are paid.

The wages of agricultural labourers, who constitute a large and growing segment of the rural workforce, are determined primarily by local labour markets, seasonal supply and demand, and the bargaining power of individual workers negotiating with individual landowners or contractors. The minimum wage provisions of the Bangladesh Labour Act do not formally exclude agricultural workers, but the scheduled employment system means that unless the Minimum Wages Board specifically fixes a minimum wage for agricultural labour, no statutory minimum applies. The Minimum Wages Board has not fixed a minimum wage for agricultural labour, and agricultural workers in Bangladesh therefore have no legal minimum wage protection.

Domestic workers, predominantly female and frequently migrant from rural areas, are in an even more precarious position. The Bangladesh Labour Act explicitly excludes domestic workers from its coverage under Section 1(4), which limits the Act's application to workers employed in industrial establishments, shops, commercial establishments, factories, and certain other specified types of enterprise. Domestic workers, who work in private households, fall outside this definition and are therefore entirely outside the protection of the Labour Act, including its minimum wage, working hours, leave, and safety provisions.

The exclusion of domestic workers from labour law protection is both a practical reality and a theoretical problem that has attracted significant attention in recent years. The ILO's Domestic Workers Convention (Convention No. 189), adopted in 2011, establishes that domestic workers are entitled to labour rights equal to those of workers in other sectors, including minimum wages, working time limits, rest periods, maternity protection, and freedom of association. Bangladesh has not ratified Convention No. 189, and the existing legal framework for domestic workers consists of no more than the limited protections offered by the general law of contract and the Suppression of Violence Against Women and Children Act, which provides some protection against physical abuse but does not address the wage rights and labour rights of domestic workers.

The reform of the wage and labour law framework for informal sector and domestic workers is among the most urgent items on the Bangladeshi labour law reform agenda. The Labour Reform

Commission's recommendation for a national minimum wage covering all workers is a starting point, but it needs to be accompanied by the development of enforcement mechanisms adapted to informal sector realities, the extension of Labour Act coverage to domestic workers, and the ratification of ILO Convention No. 189.

### 49.5 Digital Wages, Financial Inclusion, and New Vulnerabilities

The promotion of digital wage payments as a policy instrument for improving wage payment compliance and worker financial inclusion deserves more critical analysis than it typically receives in the development policy literature. The narrative that digital wages benefit workers by ensuring timely payment, creating a digital trail for compliance monitoring, and promoting financial inclusion is broadly correct, but it elides a number of important concerns about the governance of digital payment systems and the distribution of the gains from digitization.

The transition to digital wage payments in Bangladesh's garment sector has been associated with the growth of the mobile financial services sector, dominated by bKash (owned by BRAC Bank and with a significant investment from Ant Financial) and Nagad (a government-owned digital financial service). The fees charged for digital wage disbursement, the interest earned on float balances maintained by the payment service providers, and the data generated by workers' payment transactions all represent potential sources of value that accrue to the payment service providers rather than to workers. Workers who receive their wages through mobile financial services but who must pay fees to cash out their wages are, in effect, subsidizing the profits of the payment providers through their wage income.

More fundamentally, the digital wage payment system creates new forms of worker surveillance and monitoring. An employer who pays wages through a digital platform has access to data about when workers cash out their wages, what they spend them on, and whether they maintain account balances, data that could be used for purposes of worker management and control that go well beyond the straightforward administration of payroll. The privacy implications of digital wage payments for workers who have not consented to the use of their financial data for purposes other than wage disbursement are an underexplored dimension of the digitization of wage payments.

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## CHAPTER FIFTY: TOWARDS A COMPREHENSIVE WAGE REFORM FRAMEWORK: DIGNITY, DEMOCRACY, AND DEVELOPMENT

### 50.1 The Normative Framework for Wage Reform: Five Principles

The analysis of the preceding chapters, spanning the philosophy of wage justice, the history of wage regulation in Bangladesh, the architecture and failures of the minimum wage system, the catastrophic events of October and November 2023, the living wage evidence, the WPPF and its structural failures, and the law of wage payment and enforcement, converges on a set of normative principles that should guide the comprehensive reform of Bangladesh's wage law. These principles are not abstract philosophical propositions; they are derived from the specific

features of Bangladesh's labour law situation and from the international legal and philosophical frameworks that Bangladesh is legally committed to uphold.

The first principle is the principle of dignity: every worker in Bangladesh, regardless of sector, employment status, gender, or location, has a human right to wages sufficient to maintain a life of dignity for herself and her family. This principle is grounded in the constitutional commitment of Article 15, in the human rights framework of the ICESCR, in the ILO's decent work agenda, and in the philosophical traditions surveyed in Chapter Forty-Three. It implies that the minimum wage must be set with reference to actual needs, that is, the actual cost of living in dignity in Bangladesh, rather than with reference to the convenience of employers or the abstractions of competitive market theory.

The second principle is the principle of democracy: the determination of wages should be a democratic process in which the workers whose lives are most directly affected have a genuine, effective, and representative voice. This principle is grounded in republican political philosophy, in the ILO's tripartism principle, and in the constitutional right to freedom of association. It implies that the Minimum Wages Board must be reformed to ensure genuine worker representation, that independent unions must be able to participate in the wage-setting process without retaliation, and that workers must have the right to take collective action, including strike action, in support of their wage demands without criminal sanction.

The third principle is the principle of universality: wage protection must extend to all workers, not only to workers in large formal sector enterprises. This principle is grounded in the constitutional commitment to equality and in the ILO's decent work agenda, which recognizes that workers in the informal economy have the same fundamental rights as workers in the formal sector. It implies the extension of minimum wage protection to domestic workers, agricultural workers, and all other categories currently excluded from the Labour Act's coverage.

The fourth principle is the principle of accountability: employers who violate wage standards must be held accountable through effective enforcement mechanisms, including adequate inspection capacity, expedited judicial remedies, enhanced penalties, and mechanisms for collective claims on behalf of underpaid workers. This principle is grounded in the rule of law and in the constitutional guarantee of equality before the law: a law that is systematically unenforced treats the workers it nominally protects as less than equal before the law.

The fifth principle is the principle of supply chain responsibility: the international brands and buyers whose purchasing practices directly affect the financial capacity of Bangladeshi employers to pay living wages must bear legal and moral responsibility for ensuring that their purchasing practices provide the financial space for living wages, and must not be complicit in the suppression of workers who demand living wages. This principle is grounded in the emerging framework of mandatory human rights due diligence, in the political philosophy of supply chain accountability, and in the hard evidence that poverty wages in Bangladesh's garment sector are not an inevitable consequence of economic conditions but a consequence of the distribution of power in the global supply chain.

## 50.2 Reform of the Minimum Wage System

Translating the normative principles articulated above into specific legislative and institutional reforms requires attention to both the substantive standards and the procedural mechanisms through which those standards are determined and enforced. The following reform proposals are organized around the key dimensions of the minimum wage system.

The first reform is the adoption of a living wage standard as the legal definition of the minimum wage. The Bangladesh Labour (Amendment) Ordinance, 2025, introduced the requirement that the Minimum Wages Board take into account inflation and GDP growth in wage revisions, which is an improvement over the previous silence on criteria, but does not go far enough. The legislation should be amended to require that the minimum wage be set at a level sufficient to allow a worker to meet her basic needs and those of her dependents at a level consistent with human dignity, with the basic needs calculation to be conducted by an independent research body using a transparent and publicly available methodology, such as the Anker methodology, that takes into account actual costs of food, housing, healthcare, education, and other essentials in the relevant geographic areas.

The second reform is the reduction of the minimum wage revision cycle from three years to two years, with a mandatory annual inflation adjustment in years when full revision does not occur. The three-year cycle introduced by the 2025 Ordinance is an improvement, but given Bangladesh's recent experience of inflation rates exceeding the five percent annual increment, a two-year cycle with annual inflation adjustment would provide more adequate protection against the real wage erosion that has historically occurred between revision cycles.

The third reform is the fundamental democratization of the Minimum Wages Board. The worker members of the Board should be elected by the registered trade unions in the relevant industry through a process supervised by an independent electoral authority, rather than appointed by the government from among union affiliates. The Board's proceedings should be public, its data and analysis should be published before any recommendation is made, and all registered unions should have the right to make submissions to the Board. The standard for the adequacy of the wage determination should be justiciable: if the Board sets a minimum wage below the living wage standard, workers or their organizations should have the right to challenge the determination before the Labour Court or the High Court Division on the ground that it fails to meet the statutory standard of a wage consistent with dignity.

The fourth reform is the extension of minimum wage coverage to all workers, including agricultural workers, domestic workers, and all categories currently excluded from the Bangladesh Labour Act. The extension to domestic workers is particularly urgent given their extreme vulnerability and the International Labour Organization's requirements under Convention No. 189, which Bangladesh should ratify without further delay. For agricultural workers, the Minimum Wages Board should convene an inquiry into wages and working conditions across the sector and recommend a minimum wage applicable to agricultural labourers that reflects the actual cost of living in rural Bangladesh.

The fifth reform is the introduction of a national minimum wage as the floor below which no sector-specific minimum wage can fall. The existence of different minimum wages in different sectors creates a patchwork of protection that is difficult for workers and employers to navigate

and that allows some of the most vulnerable sectors to maintain wages far below any reasonable standard. A national floor wage, applicable to all employed workers regardless of sector, would simplify the minimum wage framework and ensure a basic level of protection for all workers.

### 50.3 Reform of the WPPF: Enforcement, Coverage, and Worker Control

The reform of the Workers Profit Participation Fund must address both the enforcement failure that has made the existing provisions largely ineffective and the structural inadequacies of the current framework. The following reform proposals build on the principles articulated in Chapter Forty-Eight.

The first reform is the substantial strengthening of enforcement. The Bangladesh Securities and Exchange Commission, which already has jurisdiction over listed companies, should be given a formal mandate to monitor listed companies' compliance with the WPPF provisions and to take enforcement action, including trading suspensions and director disqualification, against companies that fail to comply. The Department of Inspection for Factories and Establishments should establish a dedicated WPPF compliance unit with the mandate and resources to conduct systematic compliance audits across all enterprises subject to the WPPF obligation. The penalties for non-compliance should be substantially increased, with a minimum penalty equivalent to twice the amount of the unpaid WPPF contribution, plus interest, plus an additional punitive element.

The second reform is the reduction of the threshold for WPPF coverage. The current threshold of one crore paid-up capital or two crore fixed assets should be substantially reduced to cover enterprises with 50 or more workers, regardless of capitalization. This would extend WPPF protection to the large number of medium-sized enterprises that currently fall outside the scheme and would improve coverage for the broader formal sector workforce.

The third reform is the introduction of class action or representative claim mechanisms for WPPF disputes. Individual workers should not be required to bring separate legal proceedings to claim their WPPF entitlements; trade unions, the CBA, or a minimum number of affected workers should be able to bring a collective claim on behalf of all workers in an enterprise, with the Labour Court having jurisdiction to make an award binding on the enterprise and covering all eligible workers.

The fourth reform is the enhancement of worker control over WPPF governance. The trustee board should include workers elected by secret ballot by all workers in the enterprise, not only CBA nominees, with elections to be conducted under the supervision of an independent electoral authority. The accounts and decisions of the trustee board should be subject to annual reporting to a general meeting of all eligible workers, and workers should have the right to remove and replace trustees who fail to act in their interests.

The fifth reform is the development of a worker ownership component of the WPPF. The one-third investment component of the Participation Fund should be required to be invested in the enterprise itself, through the purchase of shares or equivalent ownership instruments, with the accumulated worker ownership stake to be maintained in a collective trust administered by the

worker trustees. Over time, this would give workers a genuine ownership stake in the enterprises whose profits they share, moving towards the ideal of the stakeholder firm in which the interests of workers are structurally represented in the governance of the enterprise.

## 50.4 The Justice After the Protests: Accountability and Reparation for October 2023

The analysis of the October and November 2023 wage protests and their suppression raises urgent questions not only of prospective reform but of retrospective accountability and reparation. The workers who died, the workers who were injured, the workers who were arrested and imprisoned, and the tens of thousands of workers who continue to face criminal charges must receive justice, and this justice is itself a dimension of the wage reform agenda.

The demand for accountability begins with the demand that those responsible for the killings of the four workers should be identified, prosecuted, and, if convicted, punished. Despite the passage of more than two years since the killings, no police official had been held accountable as of the Amnesty International report of April 2024, and there is no evidence of any meaningful progress in investigation or prosecution since then. This impunity is itself a continuation of the injustice: it signals to police and security forces that the use of lethal force against protesting workers will not be punished, creating an incentive for similar violence in future wage disputes.

The demand for accountability also extends to the criminal charges filed against tens of thousands of workers. These charges, which in the vast majority of cases appear to be based on mere participation in lawful protests rather than on any individual act of violence, should be withdrawn. The new interim government, which has expressed commitment to labour rights reform, should take active steps to ensure the withdrawal of baseless charges, should instruct prosecutors not to pursue charges against workers for exercising their constitutional rights to assemble and petition, and should provide financial assistance to workers who have incurred legal costs as a result of the charges.

The demand for reparation covers both the families of the killed workers and the workers who suffered other harms, including injury, imprisonment, dismissal, and blacklisting. The international standards on reparation for human rights violations, developed in the context of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, require that reparation be proportionate to the gravity of the violation and should include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. For the families of the killed workers, adequate compensation should be determined by reference to the workers' lost earnings, their dependents' needs, and the non-economic dimensions of their loss.

The global garment brands whose supplier factories filed criminal complaints against workers should also bear a portion of the responsibility for reparation. The principle of supply chain responsibility, developed in the context of the UN Guiding Principles on Business and Human Rights and given legal force by the EU Corporate Sustainability Due Diligence Directive, requires businesses to take action to address adverse human rights impacts in their supply chains, including impacts resulting from the actions of their suppliers. Brands whose suppliers filed criminal complaints against protesting workers, or whose purchasing practices created the

conditions that made the wage protests inevitable, have a responsibility to ensure that workers are compensated, that charges are dropped, and that their future purchasing practices provide the financial space for the payment of living wages.

## 50.5 The International Dimension: Trade Agreements, GSP, and the Wage Rights Agenda

Bangladesh's access to preferential trade arrangements in the European Union and the United States market has historically been linked, at least in principle, to compliance with international labour standards. The EU's Generalised System of Preferences (GSP) provides duty-free access to the EU market for qualifying products from developing countries, including Bangladesh, subject to compliance with a set of core labour rights drawn from the ILO's fundamental conventions. The GSP's labour standards conditionality has been a significant source of external pressure for improvements in Bangladesh's labour law, contributing to the 2013 amendments following the Rana Plaza disaster and to the ongoing reform process.

The EU's new GSP+ scheme, which provides enhanced trade preferences for countries that ratify and implement a broader set of international conventions, creates additional incentives for Bangladesh to improve its compliance with labour standards, including wage standards. Under the GSP framework, the European Commission can initiate investigations into labour standards violations and can temporarily withdraw GSP preferences from countries that fail to comply. The events of October and November 2023, including the killing of workers and the mass criminalization of protesters, attracted the attention of the EU institutions responsible for monitoring GSP compliance, and the subsequent reform process has been at least partly driven by the desire to maintain EU market access.

The United States Tariff Act of 1930, as amended, provides for the withholding of import duties on goods produced by forced labour, and the US Generalized System of Preferences conditions market access on compliance with internationally recognized worker rights. The US government's suspension of Bangladesh's GSP eligibility in 2013 following Rana Plaza, and the subsequent conditional restoration, established a pattern of linkage between trade access and labour standards that remains relevant to the current reform context.

The reform of Bangladesh's wage law and the implementation of the living wage standard are not merely domestic policy questions; they are questions with significant implications for Bangladesh's trade relationships with its major markets. Policymakers and legislators who might otherwise be inclined to prioritize employer interests over worker rights need to understand that the maintenance of poverty wages creates not only moral and human rights problems but concrete economic and political risks for Bangladesh's trade-dependent development model.

## 50.6 Wages and the Broader Development Agenda: The Political Economy of Inclusive Growth

The final dimension of the reform agenda that deserves explicit analysis is the relationship between wage reform and the broader development agenda in Bangladesh. The argument that wage increases are incompatible with export competitiveness and economic growth, which has been repeatedly invoked by employers and their government allies to resist minimum wage

improvements, rests on a model of economic development that is increasingly contested by both empirical evidence and theoretical analysis.

The evidence from East Asia's development experience, including the cases of South Korea, Taiwan, and more recently Vietnam, suggests that rapid wage growth and rapid export growth are not mutually exclusive. South Korea's garment sector maintained strong export growth through a period of rapidly rising real wages in the 1970s and 1980s because the wage increases were accompanied by corresponding improvements in productivity, technology, and product quality that enabled Korean manufacturers to move up the value chain and compete on quality rather than price. The strategic question for Bangladesh is whether a similar transition is possible, and whether the reform of wage policy can be part of a broader strategy of upgrading rather than a constraint on competitiveness.

The macroeconomic effects of minimum wage increases are also relevant to this discussion. A substantial minimum wage increase would raise the incomes of millions of workers and their families, increasing domestic consumption demand. Given the high marginal propensity to consume of low-income households, this consumption effect could stimulate significant domestic economic activity, partly offsetting any competitive effects in the export sector. The development of a stronger domestic market would also reduce Bangladesh's vulnerability to external shocks, including fluctuations in export demand from the major garment markets, and would provide a more balanced basis for sustainable long-term growth.

The research on the macroeconomic effects of minimum wages in developing countries, including work by the ILO's Research Department and by academic economists including Dani Rodrik and Arindrajit Dube, suggests that moderate minimum wage increases have predominantly positive effects on the overall economy, through consumption demand effects, reduced worker turnover costs, improved worker health and productivity, and the signal they send to the market about the government's commitment to a social contract that distributes growth benefits broadly. The Bangladesh case, where the minimum wage has consistently been held well below the living wage level, is one in which the potential gains from a substantial wage increase are particularly large.

The wage reform agenda proposed in this Part is therefore not a sacrifice of economic efficiency for social justice; it is a program for a more efficient, more equitable, and more sustainable form of economic development that distributes the gains from Bangladesh's remarkable economic growth more broadly across the population. The garment workers of Bangladesh, who have borne the largest share of the social costs of the export growth model through poverty wages, dangerous working conditions, and the suppression of their rights, deserve not only the legal protections analyzed in this work but the genuine improvement in living standards that is both economically feasible and morally required.

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*End of Part Six*

*Part Seven of this work will examine the law of working time, rest, and leave in Bangladesh, including the regulation of standard working hours, overtime, night work, weekly rest, annual leave, casual leave, sick leave, and maternity leave. The analysis will trace the philosophical foundations of the right to rest and leisure in human rights law and political philosophy, examine the colonial origins of Bangladesh's working time law, assess the current legal framework against international standards, and propose a comprehensive reform agenda grounded in the recognition that the right to rest is not a concession from employers but a fundamental aspect of every worker's human dignity and social citizenship. The analysis of working time is intimately connected to the analysis of wages in Part Six, because the manipulation of working time through excessive overtime, denial of rest days, and non-payment of overtime premiums is one of the most powerful mechanisms through which employers extract additional value from workers while evading the formal requirements of the minimum wage framework.*

*The thread connecting the analysis of wages in Part Six and the analysis of working time in Part Seven is the philosophical conviction that the terms and conditions of employment are not merely market outcomes to be distributed according to bargaining power, but expressions of the social recognition or denial of workers' equal dignity as human beings. A wage that is insufficient for life in dignity, combined with working hours that prevent workers from enjoying any rest, recreation, or family life, constitutes not merely an economic injustice but a denial of humanity. The reform agenda for both wages and working time is ultimately a single project: the recognition in law of the equal dignity and worth of every working person in Bangladesh.*

## PART SEVEN: THE LAW OF WORKING TIME, REST, AND LEAVE IN BANGLADESH: PHILOSOPHY, REGULATION, AND THE POLITICS OF THE WORKING DAY

### BIBLIOGRAPHIC PREFACE TO PART SEVEN

The analysis in this Part continues the philosophical and jurisprudential method of the preceding Parts, applying it to one of the most fundamental dimensions of the employment relationship: the question of how long a worker must work, when the worker may rest, and what entitlements the worker has to freedom from the demands of the employer across the span of a working life. These are questions about the structure of time itself as experienced within capitalist production, and they have generated some of the most profound philosophical reflection and some of the most bitter political conflict in the history of labour relations. In Bangladesh, the working time

question connects the colonial history of factory legislation to the contemporary reality of garment workers performing compulsory overtime under threat of dismissal, and it illuminates the gap between the formal guarantees of the Bangladesh Labour Act, 2006, and the lived experience of workers in the factories and informal workplaces of one of the world's most labour-intensive economies.

The chapters in this Part address the philosophical foundations of the right to rest and leisure, the colonial genealogy of Bangladesh's working time law, the architecture of the current legal framework governing hours, overtime, weekly rest, and various forms of leave, the particular conditions of vulnerable sectors, the emerging challenges of digital technology and platform work, and the comprehensive reform agenda that is required to bring Bangladesh's working time law into conformity with its constitutional commitments and international obligations. The analysis draws upon the most recent legislative developments, including the Bangladesh Labour (Amendment) Ordinance, 2025, gazetted on 17 November 2025, and the Bangladesh Labour (Amendment) Bill, 2026, passed by Parliament on 9 April 2026, as well as the most current international standards, comparative jurisprudence, and recent scholarship.

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## CHAPTER FIFTY-ONE: THE PHILOSOPHY AND JURISPRUDENCE OF WORKING TIME: FROM THE TWELVE-HOUR DAY TO THE RIGHT TO REST

### 51.1 Time, Power, and the Employment Relationship: A Philosophical Introduction

There is perhaps no more concrete expression of the power relations embedded in the employment relationship than the question of time. When an employer directs a worker to remain at the workplace beyond the agreed hours of work, to forgo rest breaks, to surrender the weekly day of rest, or to answer work-related communications during periods of legally guaranteed leave, the employer is asserting dominion not merely over the worker's labour but over the worker's life itself. The right to rest, the right to leisure, the right to a working day of bounded and predictable duration: these are not peripheral luxuries in the structure of labour rights but are among the most fundamental expressions of the worker's status as a human being rather than an instrument of production.

The philosophical literature on time and employment is rich and multidisciplinary, drawing upon political philosophy, economic theory, sociology, and the phenomenology of embodied experience. But its deepest roots lie in the labour movement itself, in the lived struggles of workers who recognized, long before academic philosophers articulated the point in formal theoretical language, that the length of the working day was not merely an economic question but a moral question about the conditions under which a fully human life could be lived. When nineteenth-century workers in Britain, Europe, and America organized under the banner of the eight-hour day with its tripartite demand of eight hours for work, eight hours for rest, and eight hours for what we will, they were articulating a profound philosophical claim: that human beings are not reducible to their labour-power, that they have needs and capacities for rest, reflection, family life, civic participation, and self-development that cannot be satisfied if the working day consumes the whole of their waking lives.

This philosophical claim connects to several distinct strands of political theory. The republican tradition, analyzed in earlier chapters of this work, holds that genuine freedom requires not merely the absence of coercion but the structural conditions for self-governance and autonomous agency. A worker who is compelled to work twelve or fourteen hours daily, who has no effective right to refuse overtime, and whose meager free time is exhausted by the physiological recovery from the previous day's labour, is not in any meaningful sense a free or self-governing person. Republican theorists from Philip Pettit to the more recent work of Stuart White and Alex Gourevitch have argued that the regulation of working time is a precondition for the kind of republican freedom that progressive political philosophy aspires to realize. A polity of workers exhausted by overlong working days cannot sustain genuine democratic participation; the attenuation of free time is simultaneously an attenuation of political freedom.

The Marxist tradition provides a different but complementary analysis. For Marx, the struggle over the length of the working day was the primordial conflict of capitalist society, the conflict through which the rate of exploitation was directly and visibly contested. Marx's extended analysis of the working day in Volume One of Capital remains one of the most powerful pieces of empirical and philosophical writing in the history of social thought. Drawing upon the Blue Books and factory inspector reports of Victorian England, Marx documented the systematic destruction of workers' health and lives through overwork, the employer's insatiable appetite for surplus labour, and the workers' heroic resistance through collective action and legislative agitation. His argument that the working day cannot be determined by any principle internal to the logic of capital exchange itself, because the commodity transaction in which the worker sells the labour-power for a given period determines neither the length of that period nor the intensity of its use, provided the theoretical foundation for the proposition that working time regulation is not a modification of the capitalist system but a precondition for the survival of the worker as a productive subject within it.

The human rights framework provides a third philosophical foundation for working time regulation. Article 24 of the Universal Declaration of Human Rights proclaims that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Article 7 of the International Covenant on Economic, Social and Cultural Rights guarantees the right to just and favourable conditions of work including rest, leisure, reasonable limitation of working hours, and periodic holidays with pay. These provisions express the philosophical conviction that the right to rest is grounded in human dignity, not merely in the functional requirements of labour productivity or the needs of social reproduction. A human being who is denied the time to rest, to play, to participate in family and community life, to develop her capacities through education and cultural engagement, is a human being whose dignity has been violated.

The capabilities approach, developed by Amartya Sen and Martha Nussbaum and increasingly influential in the philosophy of labour law, provides a fourth analytical framework. Nussbaum's list of central human capabilities includes play (the ability to laugh, play, and enjoy recreational activities) and control over one's environment (both political, in the sense of effective participation in decisions governing one's life, and material, in the sense of being able to hold property and seek employment on an equal basis). A working time regime that consumes the whole of a worker's waking life forecloses the capability for play, undermines the capability for

political participation, and reduces the worker's effective control over the basic conditions of her existence. The regulation of working time is, from a capabilities perspective, a prerequisite for human flourishing, not merely an economic or social policy choice.

These philosophical traditions, though they differ in their foundational premises and their political implications, converge on a common conclusion: the regulation of working time is a matter of fundamental moral significance, not a technical regulatory question to be resolved by reference to market efficiency alone. This conclusion has direct implications for the assessment of Bangladesh's working time law, which will be demonstrated to fall substantially short of the standards required by any of these philosophical frameworks.

### 51.2 The Historical Struggle for the Eight-Hour Day: From Manchester to Dhaka

The history of working time regulation is a history of struggle, in which the organized working class, through a combination of legislative agitation, collective bargaining, and direct action, progressively wrested reductions in working time from the resistance of employers who correctly understood that shorter working hours meant less time for the extraction of surplus value. This history is not merely a Western or European story; it has profound resonances in the history of South Asian labour and connects directly to the conditions of workers in Bangladesh today.

The starting point, in the context of industrialized capitalism, was the factory system of early nineteenth-century Britain, in which working days of fourteen, fifteen, and even sixteen hours were routine in the textile mills of Lancashire and Yorkshire. The human cost of these conditions was documented in extraordinary detail by the factory inspectors appointed under the pioneering Factory Acts, and by reformers such as Robert Owen, who argued that working hours should be limited to ten and eventually to eight per day on both humanitarian and economic grounds. Owen's argument that well-rested workers were more productive, healthier, and less prone to error anticipated by a century and a half the empirical literature demonstrating that overwork is self-defeating even on narrowly economic grounds.

The Factory Act of 1833, applying initially to the textile sector, introduced the first effective statutory limitation on working time in British history, prohibiting the employment of children under nine in textile factories and limiting the working hours of children between nine and eighteen. The Ten Hours Act of 1847 extended the limitation to ten hours per day for women and children, and the practical effect was to limit the working day for adult male workers as well. The further development of working time legislation through the remainder of the nineteenth century gradually extended protections across an increasing range of industries.

The eight-hour demand became the central organizing principle of the international labour movement in the late nineteenth century. The American Federation of Labor's campaign for the eight-hour day culminated in the Haymarket affair of 1886, in which workers demonstrating for the eight-hour day in Chicago were violently repressed by police, leading to the executions of labour leaders in one of the most controversial political trials in American history. The first of May became International Workers' Day in commemoration of these events and as an annual affirmation of the eight-hour demand. The International Labour Organization, established by the Treaty of Versailles in 1919, adopted the Hours of Work (Industry) Convention, No. 1, as its first

convention, establishing the eight-hour day and forty-eight-hour week as the international standard for industrial workers. This was one of the most significant international legal achievements of the labour movement.

In colonial India, the working time question was entangled with the particular dynamics of colonial capitalism. The Bengal textile industry, the Bombay cotton mills, the tea plantations of Assam, and the coal mines of Bihar and Bengal all operated under conditions of extreme overwork, with working days regularly exceeding twelve hours and often extending to fourteen or sixteen hours without statutory limitation. The political context of colonial labour regulation was shaped by the competing interests of the colonial state, which required social order and a productive labour force; the colonial capitalists, who sought maximum extraction from their workers; and the nascent Indian labour movement, which agitated for shorter hours and better conditions.

The Indian Factory Act of 1881, limited to establishments employing 100 or more workers using mechanical power, introduced a ten-hour day for children. The Factory Act of 1911 extended the ten-hour limitation to women in factories and introduced the first limitation for adult males: a maximum of twelve hours per day. The Factory Act of 1934, which represented the most comprehensive colonial factory legislation, established the nine-hour day and forty-eight-hour week for adult workers in factories, reflecting the international standard that had been established by ILO Convention No. 1 in 1919.

After partition in 1947, the Eastern Wing of Pakistan inherited this colonial legislative framework and applied it with minimal modification through the Pakistan period. The Factories Act, 1934, remained the primary legislation governing working time in industrial establishments, supplemented by sector-specific regulations for tea gardens, mines, road transport, and dock workers. The trade union movement of East Pakistan agitated for improvements in working conditions, including reductions in working hours, but political repression by the Pakistani state severely constrained the scope for effective labour organizing.

After independence in 1971, the Factories Act, 1934, continued in force in Bangladesh, and the working time provisions it contained remained largely unchanged until the enactment of the Bangladesh Labour Act, 2006. The BLA consolidated the scattered provisions of the predecessor legislation and introduced some modifications, but the basic framework of the eight-hour day and forty-eight-hour week, inherited from the ILO Convention of 1919 and implemented through colonial legislation of 1934, remained the structural foundation of Bangladesh's working time law. Understanding this legislative inheritance is essential to understanding both the strengths and the serious limitations of the current legal framework.

## 51.3 International Labour Standards on Working Time: The ILO Framework and Its Evolution

The ILO's framework on working time has evolved significantly since the adoption of Convention No. 1 in 1919, reflecting both the development of international labour standards and the changing nature of work. Understanding the current state of this framework is essential to assessing Bangladesh's legal obligations and identifying the direction of necessary reform.

Convention No. 1, the Hours of Work (Industry) Convention, 1919, established the eight-hour day and forty-eight-hour week as the standard for industrial workers, allowing for flexibility through averaging arrangements and exceptions for certain categories of workers. Convention No. 30, the Hours of Work (Commerce and Offices) Convention, 1930, extended similar provisions to commercial establishments and offices. Convention No. 47, the Forty-Hour Week Convention, 1935, promoted the progressive reduction of working time towards the forty-hour week as a social goal. Convention No. 14, the Weekly Rest (Industry) Convention, 1921, and Convention No. 106, the Weekly Rest (Commerce and Offices) Convention, 1957, established the right to a weekly rest period of at least 24 consecutive hours.

Bangladesh has ratified Convention No. 1 (though it was later revised by Convention No. 47) and Convention No. 14, but has not ratified many of the more recent ILO instruments on working time. Convention No. 132, the Holidays with Pay Convention (Revised), 1970, which establishes the right to a minimum of three weeks of annual paid leave, has not been ratified by Bangladesh. Convention No. 171, the Night Work Convention, 1990, which establishes specific protections for night workers including health assessments, alternative employment, and income protection, has also not been ratified. The Workers with Family Responsibilities Convention, No. 156, 1981, which addresses the working time and leave entitlements of workers with care responsibilities, has not been ratified either.

The gap between Bangladesh's ILO commitments and the full scope of the ILO's working time framework represents a significant area of legislative underdevelopment. The Labour Reform Commission's April 2025 report acknowledged the need to bring Bangladesh's working time law into conformity with a broader range of ILO standards, and the Bangladesh Labour (Amendment) Ordinance, 2025, made some improvements, but the comprehensive revision of the working time framework recommended by the Commission remains to be fully implemented through the legislative process.

The most significant recent development in international working time standards is the growing recognition, within the ILO and in national legal systems around the world, of the need to extend working time protections to workers in the informal economy, platform workers, and other non-standard forms of employment who have been systematically excluded from the protections developed for the standard employment relationship. The ILO's Recommendation No. 204, Transitioning from the Informal to the Formal Economy (2015), and its ongoing work on the future of work in the context of digital transformation, both emphasize the necessity of extending working time protections to workers currently outside the formal legal framework. This development has particular relevance for Bangladesh, where the majority of the workforce is in informal employment and is entirely excluded from the working time protections of the Bangladesh Labour Act.

### 51.4 The Jurisprudence of Working Time: Constitutional Dimensions and Fundamental Rights

The regulation of working time has a distinctive constitutional dimension that deserves careful jurisprudential analysis. The question of whether, and on what constitutional basis, the state may limit the hours that employers can require workers to work has been litigated extensively in

several jurisdictions, and the answers that different constitutional systems have provided reveal deep tensions between the constitutional commitments to freedom of contract and property rights on one hand and the constitutional commitments to social welfare, human dignity, and the rights of workers on the other.

The American constitutional experience provides the most dramatic example of this tension. In Lochner v. New York, decided in 1905, the Supreme Court struck down a New York law limiting the working hours of bakery workers to ten hours per day and sixty hours per week, holding that such a law violated the constitutional right to freedom of contract guaranteed by the Fourteenth Amendment's due process clause. The Lochner decision, for which the entire period of constitutional jurisprudence that it inaugurated is now named, treated the employment contract as a transaction between free and equal parties whose agreement the state had no authority to modify. Justice Peckham's majority opinion held that the limitation of working hours was not a legitimate exercise of the police power to protect public health or safety, but an unreasonable and unnecessary interference with the right of the individual to engage in a lawful business.

The Lochner decision was met with devastating criticism, both at the time and in retrospect. Justice Oliver Wendell Holmes's famous dissent argued that the Constitution was not intended to embody a particular economic theory, and that the majority's invocation of freedom of contract represented an ideological choice rather than a constitutional imperative. Holmes's insight was that the formal equality of the labour contract concealed a structural inequality between the parties that made the invocation of freedom of contract not a protection of workers' rights but a denial of them. The Lochner era of constitutional jurisprudence was eventually brought to an end by the constitutional revolution of 1937, in which the Supreme Court affirmed the constitutionality of New Deal labour legislation including the Fair Labor Standards Act, and accepted that the regulation of working time was a legitimate exercise of legislative authority in the public interest.

In Bangladesh, the constitutional framework governing working time regulation is significantly different from the American model, but it raises analogous tensions. The Constitution of Bangladesh, 1972, as amended, does not contain an explicit constitutional right to freedom of contract comparable to the American due process clause, and there is no Bangladeshi equivalent of the Lochner doctrine. However, the Constitution does guarantee the right to property (Article 42) and the right to carry on a lawful profession or business (implicit in Article 40), and these provisions could potentially be invoked by employers challenging working time regulations as unreasonable restrictions on business freedom.

On the other side of the constitutional balance, the Constitution's Fundamental Principles of State Policy include provisions that are directly relevant to working time. Article 15 declares that it is a fundamental responsibility of the state to secure for its citizens the provision of the basic necessities of life including food, clothing, shelter, education, and medical care, and reasonable rest and leisure. Article 18 requires the state to regard raising the level of nutrition, improvement of public health, and prohibition of intoxicating drinks and drugs as primary duties. Article 20 declares that work is a right, a duty, and a matter of honour for every citizen capable of working, and that the state shall endeavour to create conditions in which every citizen is able to obtain gainful employment. Article 34 explicitly prohibits forced labour.

The most jurisprudentially significant of these provisions for working time analysis is Article 15's reference to the right to reasonable rest and leisure as among the basic necessities that the state is obligated to secure. This provision, though it falls within Part II of the Constitution (Fundamental Principles of State Policy) rather than Part III (Fundamental Rights), and is therefore not directly enforceable as an individual constitutional right, expresses a clear constitutional commitment to the value of rest and leisure that should guide the interpretation of working time legislation and inform any assessment of its adequacy.

The Supreme Court of Bangladesh has addressed working conditions in several cases, though none has yet provided a comprehensive constitutional analysis of working time regulation comparable to the rich jurisprudence on this subject that has developed in South Africa, India, or the European Court of Human Rights. The High Court Division has granted relief in cases involving dangerous working conditions and has interpreted the Constitution's provisions on worker welfare broadly. The scope for constitutional litigation to advance working time rights in Bangladesh remains significantly underdeveloped, a lacuna that progressive public interest litigation might usefully fill.

The European Court of Human Rights has developed an increasingly rich jurisprudence on working time through its interpretation of Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. In a series of decisions, including Konrad v. Germany and Federacion de Servicios Privados del sindicato Comisiones obreras v. Spain (the Tyco case, decided by the Court of Justice of the European Union), European courts have held that excessive working time, the denial of rest periods, and the failure of employers to maintain adequate records of working time all engage fundamental rights concerns. The European Working Time Directive, interpreted in light of these fundamental rights commitments, has generated a substantial body of case law on questions including the treatment of on-call time, the definition of working time in the context of mobile workers, and the right of workers to compensatory rest. This jurisprudence, though not directly applicable in Bangladesh, provides a rich comparative resource for the development of Bangladeshi working time law.

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## CHAPTER FIFTY-TWO: THE COLONIAL ARCHITECTURE OF WORKING TIME LAW IN BENGAL AND PAKISTAN

### 52.1 The Factories Act, 1881, and Its Successors: Working Time Regulation as Colonial Management

The introduction of working time regulation in Bengal was not the product of the colonial state's humanitarian concern for the welfare of Indian workers. It was, as the historical record makes abundantly clear, primarily a response to three distinct pressures: the need to manage the competitive dynamics of the colonial textile industry, the demands of a growing Indian nationalist movement that had begun to articulate worker welfare as a component of the anti-colonial agenda, and the influence of British labour reformers who, having secured protective legislation in the metropolitan context, pressed for its extension to the colonies as a matter both of principle and of competitive equalization.

The Factories Act of 1881, the first Indian factory legislation with any real regulatory content, was introduced by the Viceroy Lord Ripon following an investigation by the Indian Factory Commission of 1875 and considerable political pressure from Manchester textile interests who complained that Indian textile factories, operating under conditions of extreme overwork, enjoyed an unfair competitive advantage over British manufacturers operating under the constraints of domestic factory legislation. The Manchester argument that Indian workers needed protection, deployed primarily as a tool of competitive advantage by British textile capitalists rather than as a genuine expression of humanitarian concern, was nevertheless effective in producing a degree of legislative intervention.

The Factories Act of 1881 applied to factories employing 100 or more persons and using mechanical power. Its working time provisions were extremely limited: it prohibited the employment of children under seven (subsequently raised to nine), limited the working hours of children between nine and twelve to nine hours per day with a compulsory interval of at least half an hour, and required that working hours for children begin no earlier than five in the morning and end no later than nine in the evening. There were no limitations whatsoever on the working hours of adult workers. The legislative drafters of 1881 were entirely frank in their acceptance of the employer's unlimited authority over the working time of adult workers; the Act's provisions for children were presented not as establishing a principle of working time protection but as a practical concession to humanitarian sentiment that went no further than was necessary to prevent the most obvious abuses.

The Factories Act of 1891 modified and extended the 1881 provisions. The minimum age for factory employment was raised to nine, the maximum working day for children was reduced to seven hours, and a limitation was introduced for women workers: a maximum of eleven hours of work per day between the hours of five in the morning and seven in the evening. Adult male workers remained entirely unprotected by any statutory working time limitation. The Act of 1891 also introduced the first provision for a weekly day of rest, requiring that women workers be given at least one day of rest in every week, though this provision was subject to extensive exceptions and was poorly enforced.

The Indian Factory Act of 1911, enacted in the context of growing nationalist agitation and the development of a more organized Indian labour movement, introduced the first statutory limitation on working hours for adult male workers: a maximum of twelve hours per day. This represented a significant legislative development, though the twelve-hour standard was already far short of the eight-hour demand that the international labour movement had been advancing for three decades. The 1911 Act also introduced provisions for rest intervals, prohibiting the employment of workers for more than six consecutive hours without a rest interval of at least half an hour.

The most significant colonial factory legislation was the Indian Factory Act of 1934, which remained the primary working time statute in Bangladesh until the enactment of the Bangladesh Labour Act, 2006. The 1934 Act was enacted in the context of the World Depression, the growing influence of the Indian National Congress, and the international framework established by the ILO Convention No. 1 of 1919. It established the following working time standards for adult workers in factories: a maximum of nine hours of work per day, a maximum of forty-eight

hours of work per week, and the requirement that no worker be employed for more than five hours without a rest interval of at least half an hour. It also established the right to a weekly day of rest, required that all work on Sundays or the weekly rest day be compensated at double rates, and introduced provisions for overtime work at enhanced rates of pay.

The 1934 Act's provisions represented a significant improvement on its predecessors and brought Indian law into closer conformity with the international standards established by ILO Convention No. 1. But the Act was shaped throughout by the colonial context in which it was produced. The enforcement mechanisms were designed primarily to extract information from factories and to punish the most egregious violations, rather than to empower workers to assert their own rights. The penalty provisions were modest and rarely enforced. The exemption provisions were extensive, allowing the state government to exempt any class of factories or any class of workers from any of the Act's provisions upon application by the factory owner. And the fundamental architecture of the Act, which treated working time regulation as a matter of industrial policy rather than of workers' human rights, shaped the legislative inheritance that Bangladesh subsequently received.

## 52.2 The Pakistan Period: Continuity and Modest Reform

The Pakistan period (1947-1971) saw the continuation of the Factories Act, 1934, as the primary working time statute in East Pakistan, with limited amendments that were driven primarily by the same combination of international pressure, nationalist political concerns, and employer accommodation that had shaped the colonial legislation. The Labour Policy of 1955, announced by the Pakistani government, affirmed the existing forty-eight-hour week as the standard and introduced provisions for a fourteenth-day rest period for factories that operated seven days a week, but it did not fundamentally alter the working time framework.

The Factories Act (Amendment) Ordinance, 1964, introduced some modifications to the existing framework, including provisions for additional overtime pay, but the basic structure of the nine-hour day and forty-eight-hour week remained unchanged. The Shop and Establishment Ordinances enacted by the provincial governments of both wings of Pakistan introduced working time regulations for commercial establishments and shops that were broadly similar to those applicable to factories, but with different schedules of opening and closing hours and different overtime provisions.

What is perhaps most significant about the Pakistan period for the purposes of understanding Bangladesh's current working time law is the systematic failure of enforcement. The factory inspection system, inherited from the colonial era, was chronically underfunded and subject to corruption, and the enforcement of working time provisions was essentially nominal in most sectors. The reality of working life in the jute mills, cotton mills, tea factories, and commercial establishments of East Pakistan was one of routine overwork far beyond the statutory standards, systematic denial of rest intervals and weekly rest days, and almost complete impunity for employers who violated the law.

This enforcement failure had a particular colonial-within-colonial character in the context of East Pakistan. The dominant class that controlled the major industries of East Pakistan was primarily

West Pakistani and was intimately connected with the Pakistani state apparatus. The trade union movement of East Pakistan was subject to severe political repression, particularly during the military regimes that characterized much of the Pakistan period. The workers who bore the heaviest burden of working time exploitation were Bengali workers in industries owned and managed by West Pakistani capital, and their systematic overwork was connected to the broader pattern of economic exploitation of the eastern wing by the western that was to become one of the driving forces of the independence movement.

## 52.3 The Emergence of a Bangladeshi Labour Law: 1971 and Its Aftermath

The independence of Bangladesh in 1971 and the subsequent development of a national labour law regime under the leadership of the Sheikh Mujibur Rahman government created both opportunities and constraints for the reform of working time law. The new government inherited the entire legislative framework of the colonial and Pakistan periods, and the immediate priorities of post-independence reconstruction, economic stabilization, and political consolidation left little room for comprehensive legislative reform.

The Labour Code of 1965, which had been enacted by Pakistan and applied to establishments other than factories, was continued in force. The Factories Act, 1934, remained the primary legislation for factories. The various sector-specific statutes, including the Mines Act, 1923, and the Tea Plantation Labour Ordinance, 1962, also continued in force. The net effect was a fragmented, overlapping, and internally inconsistent body of working time law that varied by establishment type, sector, and the particular colonial or Pakistani statute that happened to apply.

The governments of the 1970s and 1980s made limited amendments to this inherited framework, primarily in response to particular industrial disputes or specific international pressures, rather than through any comprehensive review of the working time system as a whole. The period of military rule under Ziaur Rahman and Hussain Muhammad Ershad was characterized by the suppression of independent trade unionism and a general policy of labour market flexibility designed to attract foreign investment, which militated against improvements in working time protection.

The most significant development in the working time law of this period was the growth of the ready-made garments sector in the 1980s, which rapidly became the dominant employer in the formal economy and operated under working time conditions that were, from the outset, systematically in violation of the statutory standards. The combination of buyer-imposed production deadlines, the piece-rate and quota systems that governed production planning in RMG factories, and the severe power imbalance between factory owners and their predominantly female workers created a working time regime of chronic excessive overtime, denial of rest periods, and systematic undercompensation for the extra hours worked. The regulatory framework nominally applicable to these factories, the Factories Act, 1934, was almost entirely unenforced.

The subsequent development of the RMG sector through the 1990s and early 2000s, driven by the preferential trade access provided by the Multi-Fibre Arrangement and its successor frameworks, did nothing to improve working time conditions and in many respects worsened

them. The business model of fast fashion, with its emphasis on short lead times, rapid style changes, and price competition, systematically transferred the cost of production flexibility onto workers through unpaid overtime, mandatory rest day work, and the use of piece rates and production quotas that effectively required workers to work at maximum intensity for the full duration of the working day and beyond.

It was against this background of inherited colonial legislation and systematic non-compliance in the dominant sector of the formal economy that the Bangladesh Labour Act, 2006, was enacted. The BLA represented the first comprehensive consolidation and reform of Bangladesh's labour law in the post-independence period, and it introduced a number of improvements in working time law. But it also inherited and largely perpetuated many of the structural defects of the colonial framework, and it has proved largely inadequate to address the systematic working time violations that continue to characterize both the formal and informal economies of Bangladesh.

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## CHAPTER FIFTY-THREE: THE LEGAL ARCHITECTURE OF WORKING HOURS UNDER THE BANGLADESH LABOUR ACT

### 53.1 The Standard Hours Regime: Sections 100 to 108 of the Bangladesh Labour Act

The Bangladesh Labour Act, 2006, contains its primary working time provisions in Chapter Nine (Sections 100 to 121), which bears the title "Working Hours and Leave." The analysis of these provisions requires attention to both their formal content and their practical implementation, because the gap between the formal legal text and the reality of working life in Bangladesh is, as will be demonstrated, among the most significant in the entire labour law system.

Section 100 of the Bangladesh Labour Act establishes the basic limitation on daily working hours for adult workers: no adult worker shall ordinarily be required or allowed to work in an establishment for more than eight hours in any day. This is the foundational provision of the working time framework, and it corresponds to the international standard established by ILO Convention No. 1 and implemented in colonial law by the Factories Act, 1934. The word "ordinarily" in Section 100 is significant: it signals that the eight-hour standard is understood as a normal working pattern rather than an absolute maximum, and that exceptions are provided for elsewhere in the chapter.

Section 101 establishes the weekly working hours standard: no adult worker shall work in an establishment for more than forty-eight hours in any week. Again, this standard corresponds exactly to the colonial inheritance from the Factories Act, 1934, and to the ILO Convention No. 1 standard. It is worth noting that this standard has not been revised since its original adoption under colonial law in 1934, despite the ILO's subsequent adoption of Convention No. 47 (1935), which promoted the progressive reduction of working time towards the forty-hour week as a social goal, and despite the fact that many countries that adopted the forty-eight-hour standard in the early twentieth century have since reduced their statutory working time to forty hours or less. Bangladesh remains committed to the 1919 international standard of forty-eight hours per week, a standard that was already regarded as a minimum rather than an ideal when it was first adopted.

Section 102 establishes the framework for the working day: the spread of hours in any establishment shall not in any case exceed ten hours in any day, exclusive of rest intervals, provided that the state government may by notification increase the spread to twelve hours in any case where it is satisfied that the interests of the worker so require or that the nature of the work is such as to require an extension. The distinction between the actual hours of work (limited to eight hours by Section 100) and the spread of hours (limited to ten hours by Section 102) is important: it means that a worker can be required to be present at the workplace for ten hours (or twelve hours in cases where the government has extended the spread) while actually working for only eight hours, with the remaining time being occupied by rest intervals, waiting time, and similar periods.

Section 103 addresses rest intervals, requiring that no worker be engaged for more than six consecutive hours without a rest interval of at least one hour if the total daily hours of work exceed eight, or at least half an hour if the total daily hours do not exceed eight. These provisions are broadly consistent with the requirements of good occupational health practice, though the requirement of a one-hour rest interval when daily hours exceed eight effectively creates the potential for a spread of hours of nine hours for a standard eight-hour working day. The practical significance of the rest interval provision in Bangladesh is limited by the systematic failure of enforcement and by the common practice in garment factories and other establishments of treating the lunch break as unpaid time that is deducted from the worker's pay rather than as a paid rest period.

Section 104 provides that every worker shall be allowed at least one day of rest in every week, and Section 105 specifies that this weekly rest day shall ordinarily be Sunday. These provisions reflect both the colonial inheritance (the British legal framework obviously identified Sunday as the natural rest day) and the practical reality of the majority Muslim workforce in Bangladesh, for whom Friday is the religiously significant day of rest. The Bangladesh Labour Rules, 2015, allow for the substitution of another day as the weekly rest day with the prior approval of the chief inspector of factories, and in practice many establishments, including most garment factories, operate the weekly rest on Friday rather than Sunday. The formal alignment of the statutory weekly rest day with the actual practice of the overwhelming majority of Bangladeshi establishments is one of the technical improvements that the Labour Reform Commission has recommended and that the 2025 Ordinance partially addressed.

Section 106 governs the situation where a worker is required to work on the weekly rest day, providing that such a worker shall be granted a compensatory rest day in lieu within the following week, and shall be paid overtime rates for the work performed on the rest day. The practical enforcement of this provision is extremely weak, and the systematic denial of compensatory rest to workers who work on their designated rest days is a documented and widespread violation in the garment sector and elsewhere.

### 53.2 The Spreading and Averaging Provisions: Flexibility and Its Costs

The Bangladesh Labour Act contains several provisions that allow for the spreading and averaging of working hours across days and weeks, which introduce significant flexibility into the working time framework at the potential cost of working time protection for individual

workers. Understanding these provisions requires careful analysis, because their interaction with the basic hour limitations and the overtime regime creates a complex and sometimes opaque legal framework that is difficult for workers to understand and enforce.

Section 108 allows employers, with the prior approval of the chief inspector, to introduce a system of averaging working hours over a period of up to four weeks, subject to the condition that the average hours worked over the averaging period shall not exceed the standard forty-eight hours per week. This averaging provision has the effect of permitting working weeks of sixty or more hours in some weeks, provided that they are offset by shorter working weeks in others, so long as the average over the reference period does not exceed forty-eight hours. For workers, this means that the week-by-week guarantee of a maximum of forty-eight hours is diluted into a longer-term average that gives employers substantial flexibility to vary working hours according to production demands without triggering overtime obligations.

The averaging provision is particularly problematic in the context of the garment sector, where production demands are highly variable, with periods of intense activity around seasonal deadlines alternating with slower periods. The practical effect of the averaging provision in this context is to permit employers to impose extremely long working hours during peak production periods without compensating workers with either overtime pay or genuine compensatory rest during slower periods. The ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly raised concerns about the averaging provisions in Bangladesh's working time law and their compatibility with ILO Convention No. 1's requirements.

The Bangladesh Labour (Amendment) Ordinance, 2025, introduced some modifications to the averaging provisions, but did not fundamentally address the concern that the scope for averaging effectively undermines the practical significance of the standard hours limitation for workers in variable-demand sectors. A comprehensive reform of the averaging provisions would require both a reduction in the reference period over which averaging is permitted (from four weeks to perhaps one or two weeks) and enhanced requirements for genuine compensatory rest to be provided when workers work above the standard hours in any given week.

### 53.3 The Night Work Regime: Protection and Its Gaps

Night work occupies a distinctive position in working time law, because of the well-established evidence that working during the night disrupts the circadian rhythm, impairs cognitive function, increases the risk of accidents, and is associated with a range of serious long-term health consequences including cardiovascular disease, metabolic disorders, and increased cancer risk. ILO Convention No. 171 on Night Work, adopted in 1990, establishes specific protections for night workers including mandatory health assessments, the right to transfer to day work in cases of health problems attributable to night work, maternity protection for pregnant night workers, and enhanced income protection.

Bangladesh has not ratified Convention No. 171, and its domestic law contains relatively limited provisions specifically applicable to night workers. Section 100 of the Bangladesh Labour Act's limitation of ordinary working hours to eight hours per day applies to night workers as well as day workers, but there are no specific provisions addressing the health assessment requirements,

the right to transfer to day work, or the enhanced income protection that Convention No. 171 mandates. The provisions on spread of hours (Section 102) nominally limit the spread of a night worker's working day, but the practical enforcement of these provisions in establishments that operate night shifts is extremely weak.

The situation of women working night shifts deserves particular attention. The Bangladesh Labour Act contains provisions that limit the employment of women during night hours: under Section 109, women shall not ordinarily be required to work between the hours of ten in the evening and six in the morning. This limitation was introduced with a protective intent, reflecting concern about the safety of women working at night in a context of widespread gender-based violence and limited transportation infrastructure. However, the same provision allows exceptions where the employer obtains special permission from the relevant authority, and in practice the garment sector and other industries where women constitute the majority of the workforce regularly employ women during night hours under the exception framework.

The feminist jurisprudential critique of the night work prohibition for women has raised important arguments about the tension between protective intent and autonomy: if women's night work is restricted primarily because of safety concerns attributable to male violence and inadequate transportation infrastructure, the appropriate regulatory response is to address those concerns directly (by improving transportation, implementing stronger anti-harassment measures, and creating safe return-home arrangements) rather than to restrict women's access to work during certain hours. The restriction, however well-intentioned, effectively limits women's economic opportunities and treats their safety as a reason to limit their work rather than as an employer's and state's obligation to ensure. Recent scholarship on the feminist critique of protective labour law, including the 2024 analysis by Virginia Mantouvalou and others in the European context, develops this argument in ways that are directly applicable to the Bangladeshi situation.

### 53.4 The Hours Law and Occupational Health: Evidence and Analysis

The connection between working time and occupational health is one of the most thoroughly documented relationships in the empirical literature on work. The medical evidence on the health consequences of overwork is extensive and consistent: long working hours are associated with increased risk of cardiovascular disease, stroke, depression, anxiety, burnout, musculoskeletal disorders, and workplace accidents. The World Health Organization and ILO's joint analysis, published in 2021 and updated in subsequent reports through 2024, estimated that 745,000 deaths per year globally were attributable to overwork-related cardiovascular disease and stroke, with the burden particularly concentrated in low- and middle-income countries where working time protections are least effective.

In Bangladesh specifically, the evidence on the health consequences of overwork is both systemic and sector-specific. Studies by the Bangladesh Institute of Labour Studies (BILS) and by international researchers have documented the widespread prevalence of musculoskeletal disorders, fatigue-related injuries, and mental health problems among garment workers. The combination of long working hours, high production intensity, inadequate rest breaks, and the physical demands of standing work on hard concrete floors for extended periods creates

conditions of significant occupational health risk that are documented but inadequately addressed by the regulatory framework.

The heat stress problem deserves particular attention in the Bangladesh context. Bangladesh's climate means that factory temperatures during the hot season (March to June) regularly exceed levels that are physiologically stressful for workers performing physical labour. The Bangladesh Occupational Safety, Health and Welfare Rules, 2020, introduced some provisions addressing workplace temperature and ventilation, but the interaction between excessive working hours, high production intensity, and heat stress creates a risk environment that the current regulatory framework does not adequately address. The ILO's working time research group has recently identified heat stress as one of the emerging occupational health challenges associated with climate change that requires integration into working time regulation, particularly in tropical countries like Bangladesh where the heat burden on workers is likely to increase further as global temperatures rise.

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## CHAPTER FIFTY-FOUR: OVERTIME REGULATION: THEORY, LAW, AND SYSTEMATIC VIOLATION

### 54.1 The Theory of Overtime: Economics, Philosophy, and Worker Agency

Overtime work, understood as work performed beyond the standard hours of the working day or week, occupies a complex position in the theory and practice of labour law. At one level, overtime can be understood as a contractual mechanism through which the employer purchases additional units of the worker's labour-time beyond the standard working period, compensating the worker at an enhanced rate that reflects both the inconvenience and health cost of additional work and the employer's willingness to pay a premium for the productivity gains associated with production flexibility. At another level, overtime can be understood as a mechanism through which employers systematically evade the purposes of working time regulation, using the formally voluntary character of overtime agreements to extract labour beyond the limits that the law seeks to establish.

The economic theory of overtime has been the subject of considerable analysis. The traditional model suggests that workers who prefer more income to less income will voluntarily agree to overtime work if the premium rate offered is high enough to compensate for the disutility of additional work. On this model, mandatory overtime premiums serve primarily to increase the cost of overtime to employers and thereby reduce their demand for it, while simultaneously compensating workers for the inconvenience of working additional hours. The theory predicts that high overtime premium rates will reduce the incidence of overtime while increasing the hourly compensation of workers who do perform overtime.

The alternative model, associated with the political economy of labour relations, holds that overtime is rarely truly voluntary in the conditions of unequal bargaining power that characterize the employment relationship. Workers who depend on their wages for subsistence and who fear dismissal or demotion if they decline overtime work are not freely choosing to work additional

hours; they are responding to implicit or explicit coercion. The so-called "voluntary" nature of overtime agreements is, in most cases, a fiction that obscures the reality of employer power over workers' time. On this analysis, the relevant policy response is not merely to set high overtime premiums but to establish absolute maximum hours of work beyond which no overtime is permissible under any circumstances.

The philosophical analysis of overtime connects to the republican concept of domination analyzed in Chapter Fifty-One. A worker who is effectively compelled to work overtime on penalty of dismissal or reduced income is subject to the arbitrary power of the employer in a paradigmatic way: the employer can extend the working day at will, subject only to the obligation to pay an enhanced rate, and the worker has no effective means of resistance except collective action or statutory protection. The regulation of overtime is therefore not merely an economic question about the price of labour-time but a political question about the limits of employer authority over workers' lives.

## 54.2 The Legal Framework for Overtime under the Bangladesh Labour Act

Section 108 of the Bangladesh Labour Act addresses overtime work. It provides that a worker may be required or allowed to work in an establishment for overtime not exceeding two hours in any day, or a total of twelve hours in any week, provided that the total hours of work including overtime shall not exceed ten hours in any day or sixty hours in any week. Workers who perform overtime must be paid at twice the ordinary rate of pay for each hour of overtime worked. The total overtime permitted in a year shall not exceed one hundred and twelve hours.

Several aspects of the overtime provisions deserve critical analysis. First, the absolute ceiling of two hours of daily overtime and twelve hours of weekly overtime means that the maximum permissible working week in Bangladesh is sixty hours. This is a substantial working week by any standard: it represents an increase of twenty-five percent over the standard forty-eight-hour week, and it means that a worker performing the maximum permissible overtime will work a minimum of ten hours per day for six days each week, or some equivalent combination. The ILO Convention No. 1's standard of forty-eight hours is already at the maximum of what can be considered a humane working week by contemporary standards; a working week of sixty hours represents a significant departure from the values that Convention embodies.

Second, the annual cap of one hundred and twelve hours of overtime, though it provides a limit on total overtime over the course of a year, is poorly drafted and creates anomalies. One hundred and twelve hours represents approximately eleven weeks of two hours daily overtime, or approximately nine full overtime days at eight hours per day. If this limit were rigorously enforced, it would provide meaningful protection against the pattern of year-round compulsory overtime that is documented in the garment sector. But the cap is rarely enforced, and in practice many garment workers perform overtime far in excess of the statutory annual limit without any enforcement consequence.

Third, the overtime premium of double pay, while higher than the standards in some comparative jurisdictions (the United States, for instance, requires only time-and-a-half for overtime), is in practice systematically unpaid or underpaid in many sectors of the Bangladeshi economy. The

combination of complex and opaque wage structures, the use of piece rates and production bonuses, the inadequate wages record-keeping of many employers, and the weak enforcement capacity of the Department of Inspection for Factories and Establishments means that many workers who perform overtime work do not receive the legally mandated double-time premium. The scale of overtime wage theft in the garment sector alone, estimated by the Worker Rights Consortium and other monitoring organizations, represents a significant transfer of value from workers to employers.

Fourth, the provision allowing a worker to be "required or allowed" to work overtime conflates two very different situations: the situation where the employer directs overtime work (in which the element of worker consent is, as argued above, largely fictional in the conditions of unequal bargaining power) and the situation where the worker voluntarily requests to work additional hours for additional income. A more nuanced legal framework would distinguish between employer-directed overtime (which should be subject to stricter limits and higher premiums, and to the genuine right of workers to refuse without penalty) and worker-requested overtime (which might be accommodated more flexibly within an overall hours ceiling).

### 54.3 The Reality of Overtime in Bangladesh: Systematic Violation and Its Causes

The gap between the formal overtime provisions of the Bangladesh Labour Act and the reality of working life in Bangladesh's garment sector is one of the most thoroughly documented features of the country's labour law system. Multiple studies, compliance audits, worker interviews, and factory inspection reports have consistently demonstrated that overtime work in the RMG sector regularly and systematically exceeds the statutory limits, that the double-time premium is frequently not paid or is underpaid, and that workers routinely feel unable to refuse overtime work despite the formal voluntariness of overtime agreements.

The Accord on Fire and Building Safety in Bangladesh, and its successor the International Accord for Health and Safety in the Textile and Garment Industry (the International Accord, established in 2021 and renewed through 2026), includes working time and overtime among the issues addressed by factory inspections. The inspection data published by the International Accord consistently identifies excessive overtime and failure to pay overtime premiums as among the most common violations found in inspected factories. The Worker Rights Consortium's factory assessment reports, and the Clean Clothes Campaign's monitoring work, provide extensive documentation of overtime violations that are systematic rather than exceptional.

The structural causes of overtime violations in the garment sector are well understood. The fast fashion business model, with its emphasis on short lead times, requires production flexibility that factories manage by maintaining a relatively smaller permanent workforce and managing production surges through mandatory overtime. The buyer-imposed delivery deadlines, combined with last-minute order changes and compressed production schedules, create systemic pressure on factory managers to require overtime work that regularly exceeds statutory limits. The workers most affected are the predominantly female sewing machine operators whose time is least flexible within the production system because their work is directly linked to the physical assembly of garments.

The causes of overtime pay violations are similarly structural. The complex wage structures common in the garment sector, combining a basic wage with attendance bonuses, production bonuses, and various allowances, create opportunities for employers to obscure the calculation of overtime premium rates. Where overtime is computed on the basis of basic wage only, rather than on the basis of the worker's total actual compensation, the effective premium rate for overtime is substantially less than the statutory double-time rate, because the production bonuses and allowances that form a significant part of the worker's total income are excluded from the calculation base.

The 2025 Labour Reform Commission report addressed the overtime payment calculation issue and recommended that the overtime premium be computed on the basis of the worker's total actual compensation, including all regular allowances and bonuses, rather than on the basis of basic wage alone. This recommendation was incorporated into the Bangladesh Labour (Amendment) Ordinance, 2025, and represents a significant improvement in the law. But the improvement will have little practical effect unless accompanied by a substantial enhancement of enforcement capacity, including the appointment of sufficient trained labour inspectors with adequate resources for systematic factory inspections.

### 54.4 Overtime, Productivity, and the Economic Case for Shorter Working Hours

The argument that excessive overtime is economically irrational, even from the employer's perspective, has been developed by a growing body of research that challenges the assumption that more working hours automatically means more output. The relationship between working hours and productivity is not linear: above certain thresholds, additional hours of work produce diminishing and eventually negative returns, as fatigue, cognitive impairment, and reduced motivation reduce the quality and quantity of output per hour worked.

The research on the productivity effects of long working hours has been substantially strengthened by the natural experiments and randomized controlled trials conducted in several countries over the past decade. Studies of four-day working weeks in Iceland (2015-2019), Japan (Microsoft's 2019 experiment), and numerous private sector organizations across Europe and North America have consistently found that reducing working time without reducing pay does not reduce output and in most cases increases productivity, reduces worker turnover, improves worker health, and enhances organizational culture. The ETUC's 2024 study on working time reduction in collective agreements, which surveyed the experience of collective bargaining outcomes in seventeen European countries, found that collectively bargained reductions in working time were associated with improved worker well-being without negative effects on economic performance.

In the Bangladesh garment sector context, the argument for working time reduction has additional dimensions. The excessive overtime that characterizes the sector is associated with elevated accident rates, quality defects (tired workers make more mistakes), higher worker turnover (workers who are chronically overworked leave for other employers or leave the workforce altogether), and the human and social costs of absent parents and exhausted community members. The transition to a working time regime that genuinely complies with the statutory forty-eight-hour week, supplemented by reasonable voluntary overtime at genuinely

premium rates, would not destroy the competitive position of the Bangladesh garment industry. It would, rather, align the sector with the business model of higher value-added, quality-focused production that requires skilled, motivated, and healthy workers rather than exhausted ones.

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## CHAPTER FIFTY-FIVE: WEEKLY REST, HOLIDAYS, AND THE RIGHT TO LEISURE IN BANGLADESH

### 55.1 The Right to Weekly Rest: Philosophical and Legal Foundations

The weekly day of rest has deep roots in the religious traditions of all the major world religions and in the philosophical traditions of classical antiquity. The Jewish Sabbath, the Christian Sunday, the Muslim Friday: all represent a shared human conviction, expressed through diverse religious and cultural forms, that the rhythm of human life requires periodic interruption of labour for rest, worship, family, and community. The philosophical anthropology embedded in these religious traditions recognizes something that Aristotle articulated in secular philosophical terms: that the good life for human beings is not a life of uninterrupted toil but a life in which work is balanced by leisure, where leisure is understood not as passive inactivity but as active engagement with the things that make life worth living: friendship, civic participation, intellectual and aesthetic pleasure, and spiritual reflection.

The legal recognition of the weekly day of rest has a long history that predates modern labour law. Sunday observance legislation in England, dating from the reign of Charles II, prohibited certain forms of work and commerce on Sundays, though primarily for religious rather than humanitarian reasons. The development of modern working time law in the nineteenth century progressively transformed the Sunday rest from a religious obligation into a labour right, as trade unions and reformers argued that every worker, regardless of religious affiliation, had a human right to a weekly day of rest as a condition of dignified existence.

The ILO's Weekly Rest (Industry) Convention, No. 14, adopted in 1921, established the right to a weekly rest period of at least twenty-four consecutive hours for workers in industrial establishments. Bangladesh ratified Convention No. 14, and its domestic law (Section 104 of the Bangladesh Labour Act) is formally consistent with this requirement. However, the practical enforcement of the weekly rest entitlement is, as with most other working time provisions, significantly deficient.

The Weekly Rest (Commerce and Offices) Convention, No. 106, adopted in 1957, extended the right to weekly rest to workers in commercial establishments and offices. Bangladesh has not ratified Convention No. 106, and the working time provisions applicable to commercial establishments under the Bangladesh Labour Act, while including a weekly rest entitlement, are less comprehensive than those applicable to factories and are subject to different enforcement arrangements.

### 55.2 Public Holidays and Festival Leave: Law, Practice, and Reform

The Bangladesh Labour Act establishes a framework of compulsory public holidays that supplements the weekly rest entitlement. Under Section 115, every worker shall be entitled to eleven days of public holidays in a year, with pay. The specific public holidays to which workers are entitled include Eid-ul-Fitr (three days), Eid-ul-Adha (two days), National Mourning Day (15 August), Independence Day (26 March), Victory Day (16 December), Shab-e-Barat (one day), and other holidays gazetted by the government. The precise list of holidays varies slightly from year to year as the government exercises its power to designate festival days, and sector-specific minimum wage schedules sometimes specify different public holiday entitlements.

The system of festival bonuses, which provides workers in the formal sector with additional payments equivalent to one month's basic wage at each of the two Eid festivals, is closely connected to the public holiday framework. The festival bonus, which was introduced as a non-statutory practice and has been progressively institutionalized through ministerial directives and sectoral minimum wage orders, is one of the most significant components of the total annual compensation of formal sector workers. The Bangladesh Labour (Amendment) Ordinance, 2025, strengthened the legal basis for festival bonuses and introduced provisions for their calculation and payment, addressing some of the ambiguities in the previous framework.

The practical reality of festival holiday observance in Bangladesh reveals significant class and sector variation. Workers in the formal sector, particularly in the RMG sector and in commercial establishments in major cities, generally receive their formal holiday entitlements, though there are documented cases of pressure on workers to forego public holidays or to work on public holidays without proper compensation. Workers in the informal sector, in domestic service, and in agriculture have no effective legal entitlement to public holidays and generally work through all public holidays without any additional compensation.

The question of whether the current public holiday framework adequately reflects the diversity of Bangladesh's religious and ethnic communities deserves analysis. Bangladesh's Hindu, Buddhist, and Christian minorities observe different festivals and have different religious calendars from the Muslim majority, but the list of compulsory public holidays is heavily weighted towards Islamic festivals. The provisions of the Bangladesh Labour Act allow for the substitution of religious festival holidays, permitting non-Muslim workers to take alternative days off in lieu of Islamic holidays, but the practical implementation of this substitution right is complex and poorly understood by both workers and employers.

### 55.3 The Right to Leisure: A Neglected Dimension of Working Time Law

The right to leisure as a distinct legal concept, separate from the right to rest (which is primarily concerned with physical recovery from the demands of work) and the right to annual leave (which provides a longer period of freedom from work), has received relatively little attention in the labour law of Bangladesh or indeed in the comparative labour law literature more generally. Yet the philosophical foundations of working time regulation, analyzed in Chapter Fifty-One, strongly suggest that the right to leisure is a fundamental component of the right to a dignified working life.

The distinction between rest and leisure, at the philosophical level, is the distinction between recovery and flourishing. Rest, in the narrow physiological sense, is what the body and mind require to recover from the demands of the previous period of activity and to be ready for the next. Leisure, in the richer philosophical sense that Aristotle had in mind when he argued that the goal of work was leisure and not the reverse, is the condition of freedom from necessity in which human beings can engage in activities that are valuable in themselves rather than merely instrumental to other ends. Reading, friendship, civic participation, artistic creation, sport and physical recreation, spiritual practice, and the cultivation of knowledge: these are the activities that constitute leisure in the full philosophical sense, and they are precisely the activities that excessive working time forecloses.

The right to leisure, understood in this philosophical sense, has been recognized in international human rights law (Article 24 of the UDHR and Article 7 of the ICESCR, as analyzed above) but has been relatively underdeveloped in domestic labour law, including Bangladeshi labour law. The Bangladesh Labour Act's provisions on working time are primarily designed to protect workers' health and safety (by limiting the hours during which the body and mind are subjected to the demands of work) rather than to protect the positive conditions for leisure and flourishing. A more ambitious working time framework would not merely set maximum hours but would also ensure that the pattern of working time, including the distribution of hours across the day and week, was organized in ways that provided workers with the genuine opportunity for the leisure activities that constitute a fully human life.

The connection between working time and civic participation deserves particular emphasis in the Bangladeshi context. Democratic governance requires an informed, engaged, and participatory citizenry, and participation in democratic processes (voting, community organizing, attending public meetings, engaging with local government, participating in civil society) requires free time. Workers who are routinely working sixty hours per week, including weekends and festival days, have neither the time nor the energy for meaningful civic engagement. The attenuation of workers' civic capacity through excessive working time is therefore not merely a private harm to individual workers but a public harm to the democratic polity as a whole.

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## CHAPTER FIFTY-SIX: ANNUAL LEAVE, CASUAL LEAVE, AND SICK LEAVE: THE ARCHITECTURE OF RECUPERATION

### 56.1 Annual Leave: The Legal Framework and Its Deficiencies

Annual leave is the longest and most significant form of periodic rest to which workers are entitled under modern labour law. It serves multiple purposes: it provides an extended period of physical and psychological recuperation from the cumulative demands of a year of work; it enables workers to engage in activities that require more time than is available during weekly rest or public holidays (travel, family visits, extended cultural engagement); and it provides an occasion for the renewal of family relationships and community ties that are strained by the demands of employment.

The ILO's Holidays with Pay Convention, No. 132 (Revised), 1970, establishes a minimum annual leave entitlement of three working weeks (fifteen working days) for workers employed for one year. Bangladesh has not ratified Convention No. 132, and its domestic annual leave provisions are substantially less generous than the international standard.

Under Section 117 of the Bangladesh Labour Act, a worker who has completed one year of continuous service is entitled to annual leave with pay of one day for every eighteen days of work performed in the factory (for adult workers), or one day for every twenty-two days of work performed (for adolescent workers). This calculation produces an annual leave entitlement of approximately ten working days for an adult worker who works a full six-day week, or approximately fourteen working days for a worker who works five days per week. Neither of these figures reaches the fifteen working day minimum recommended by ILO Convention No. 132.

The mechanism for calculating the annual leave entitlement under Section 117 is based on actual days worked rather than on the calendar year of service, which means that workers who have had periods of absence (due to illness, childbirth, industrial action, or layoff) will receive a reduced leave entitlement. This feature of the law penalizes workers for unavoidable absences and is inconsistent with the human rights basis of the annual leave entitlement: if annual leave is grounded in the worker's right to periodic rest and recuperation, then the entitlement should not be reduced because the worker has already been absent from work for reasons beyond her control.

The Bangladesh Labour (Amendment) Ordinance, 2025, did not substantially modify the annual leave calculation formula, though it introduced some improvements in the provisions governing the payment of leave allowances and the procedure for scheduling leave. The Labour Reform Commission's recommendation for an increase in the annual leave entitlement to at least fifteen days, in conformity with ILO Convention No. 132, remains to be implemented.

The right to carry forward accumulated leave entitlements, and to receive payment in lieu of unused leave upon termination of employment, is governed by Sections 118 and 119 of the Bangladesh Labour Act. Section 118 allows accumulated leave to be carried forward for a maximum of three years, with the provision that leave entitlements exceeding sixty days (for adults) must be encashed at the end of the accumulation period. Section 119 requires that workers who leave employment, whether by resignation, retirement, or dismissal, receive payment for any accumulated but untaken leave at the ordinary rate of pay.

The practical enforcement of the annual leave provisions is significantly deficient. In the garment sector, the taking of annual leave is often conditional on the employer's operational requirements, and workers frequently face pressure to defer or forego leave during peak production periods. The documentation of leave records is inconsistent, and many workers lack access to the records that would allow them to verify whether their leave accumulations and encashments have been correctly calculated. The Labour Reform Commission identified leave record-keeping and transparency as areas requiring improvement, and the 2025 Ordinance introduced some provisions addressing employer record-keeping obligations.

## 56.2 Casual Leave: Purpose, Law, and the Reality of Informal Sector Workers

Casual leave provides workers with a limited entitlement to short-term absences from work for personal reasons without the requirement of advance notice or medical certification. Under Section 116 of the Bangladesh Labour Act, every worker is entitled to casual leave with full pay for ten days in a calendar year. Casual leave entitlements that are not availed during a calendar year do not carry forward to the next year and are forfeited without compensation. The Act specifies that no worker can take more than three days of casual leave at a time and that casual leave must be taken with the employer's permission, although in practice the requirement of permission for casual leave is widely interpreted as requiring notice rather than advance approval.

The casual leave provision serves an important practical function in the context of a labour market where many workers, particularly in the garment sector, have limited savings and cannot afford to lose wages for the brief personal absences (medical appointments, family emergencies, administrative tasks, domestic responsibilities) that are inevitable features of working life. The guaranteed right to ten days of paid casual leave per year represents a modest but real protection against income loss from such absences.

However, the casual leave entitlement under the Bangladesh Labour Act applies only to workers in the formal sector establishments covered by the Act. Workers in the informal sector, agricultural workers, domestic workers, and workers in establishments below the threshold size for coverage under the Act have no statutory right to casual leave. For the majority of Bangladesh's workforce, which is employed in the informal economy, casual leave is entirely at the discretion of the employer, and the worker who must take time away from work for a personal reason does so at the risk of wage deduction or dismissal.

The reform of casual leave provisions in the context of comprehensive labour law reform should address both the adequacy of the current entitlement (whether ten days is sufficient) and the extension of the entitlement to all workers regardless of sector or employment status. The Labour Reform Commission's recommendation for a universal minimum casual leave entitlement, applicable to all workers in all forms of employment including informal employment, represents the appropriate direction of reform.

## 56.3 Sick Leave: The Intersection of Working Time Law and Health Protection

Sick leave provisions represent the intersection of working time regulation and occupational health law, providing workers with the entitlement to be absent from work without income loss when they are too unwell to perform their work duties. The philosophical basis of sick leave is relatively straightforward: if workers are to have genuine freedom from the demand to present themselves for work regardless of their physical condition, they must have an income replacement mechanism that protects them from the economic cost of illness. A legal framework that provides workers with the right to be absent when sick but that provides no income protection for sickness absence is not a genuine sick leave entitlement but a formal right without practical content.

Under Section 116 of the Bangladesh Labour Act, every worker is entitled to sick leave with full pay for fourteen days in a calendar year. This entitlement applies without the need for advance notice, but workers who claim sick leave are generally expected to provide medical certification for absences exceeding two days. Sick leave entitlements not availed during a calendar year do not carry forward.

The sick leave provisions of the Bangladesh Labour Act represent an improvement over the colonial framework but fall short of international good practice in several respects. The entitlement of fourteen days of paid sick leave per year is relatively modest by international standards: ILO Convention No. 130 on Medical Care and Sickness Benefits (1969), which Bangladesh has not ratified, establishes more comprehensive standards for sickness benefit protection. More significantly, the sick leave entitlement under the BLA applies only to formal sector workers, leaving the vast majority of the Bangladeshi workforce without any statutory sick leave protection.

The practical reality of sick leave in the garment sector is one of the most troubling aspects of the working conditions documented by monitoring organizations. Many garment workers report that they are effectively unable to take sick leave without losing income or facing informal disciplinary consequences such as reduction in production quotas, denial of overtime work, or informal pressure to resign. The combination of attendance bonus systems (which provide additional payments for workers with zero absences) and production quota systems (which require workers to maintain output levels regardless of health status) creates perverse incentives that discourage sick leave taking even among genuinely ill workers.

The public health consequences of inadequate sick leave in the garment sector are significant: workers who cannot afford to take sick leave because of the associated income loss continue to work while ill, infecting co-workers in the densely populated factory environment. The COVID-19 pandemic, which swept through Bangladesh's garment sector in 2020 with devastating consequences, illustrated the public health stakes of inadequate sick leave provision in a uniquely dramatic way.

The UK Employment Rights Bill, 2024-25, introduced provisions removing the three-day waiting period for statutory sick pay and extending eligibility to all workers regardless of earnings level, providing a comparative example of how sick leave law can be reformed to provide more effective protection for lower-income workers. The Bangladesh Labour Reform Commission's recommendations for sick leave reform drew on comparative examples including the UK reform and the experience of several Asian countries that have introduced more comprehensive sick leave protection.

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## CHAPTER FIFTY-SEVEN: MATERNITY LEAVE, PATERNITY LEAVE, AND THE CARE ECONOMY IN LABOUR LAW

### 57.1 The Philosophy of Care and Labour Law: A Feminist Analysis

The treatment of maternity leave, paternity leave, and parental rights in labour law is one of the areas where the feminist critique of mainstream labour law has been most powerful and most practically consequential. Mainstream labour law theory, shaped by the standard employment relationship model of a male breadwinner in full-time, continuous employment, has historically treated the reproductive and care responsibilities of workers as private matters outside the scope of labour law. The feminist challenge to this model has argued, with increasing success, that the social reproduction of the workforce, including pregnancy, childbirth, breastfeeding, and childcare, is not merely a private biological event but a socially necessary activity whose costs and benefits are distributed between workers, employers, the state, and society as a whole, and whose legal regulation is therefore a matter of justice rather than of private charity.

The philosophical grounding of maternity leave rights has been developed in several directions. The anti-discrimination argument holds that treating pregnancy-related absences as grounds for dismissal or disadvantage constitutes a form of sex discrimination, because the capacity for pregnancy is a characteristic of female bodies that cannot be separated from the social identity of women as workers. The capabilities approach, developed by Nussbaum and others, identifies bodily health and integrity (including reproductive health) as one of the central human capabilities that the state is obligated to protect, and grounds the right to maternity leave in the fundamental commitment to protecting women's bodily integrity and health. The care ethics approach, associated with Carol Gilligan, Nel Noddings, and Virginia Held, argues that the relationship of care between parent and infant is one of the most fundamental forms of human relationship, and that labour law must be designed in ways that protect and support this relationship rather than treating it as an obstacle to productive employment.

The recent development of paternity leave and shared parental leave provisions in numerous legal systems reflects a more complex argument about the gendered division of care work and its consequences for gender equality in both the labour market and the domestic sphere. The argument, supported by extensive empirical research, is that the assignment of the primary burden of care responsibilities to women, reinforced by maternity leave provisions that apply only to mothers and not to fathers or co-parents, perpetuates the gender pay gap, limits women's career progression, and maintains the gendered division of labour that feminist jurisprudence seeks to challenge. Shared parental leave, designed to be taken by either parent and to encourage fathers' participation in infant care, is therefore not merely a benefit for individual families but a tool of gender equality policy.

These philosophical arguments have significant implications for the assessment of Bangladesh's maternity leave and related provisions, which will be demonstrated to be seriously deficient in comparison with the international standards and with the philosophical ideals they embody.

### 57.2 Maternity Leave under the Bangladesh Labour Act: Law, Reality, and Reform

The maternity leave provisions of the Bangladesh Labour Act are contained in Chapter Five (Sections 45 to 50), reflecting their historical development as a distinct strand of protective legislation rather than as part of the general working time framework. The current provisions, as modified by successive amendments including the 2013 amendment following the Rana Plaza disaster and the 2025 Ordinance, establish the following framework.

Section 46 entitles every female worker who has worked for a continuous period of at least six months with an establishment to maternity benefit consisting of a cash payment equivalent to her wages for a period of eight weeks before the date of her expected delivery and eight weeks after that date. The total maternity benefit period is therefore sixteen weeks, calculated at the ordinary rate of pay.

The Bangladesh Labour (Amendment) Ordinance, 2025, extended the maternity benefit period from the previous sixteen weeks (as established by the 2013 amendment) to address concerns that sixteen weeks was insufficient for the complete physical recovery from childbirth and for the establishment of breastfeeding. The ILO Maternity Protection Convention, No. 183 (2000), which Bangladesh has not ratified, recommends a minimum maternity leave of fourteen weeks, with a recommendation that member states consider extending this to eighteen weeks. The current sixteen-week provision therefore nominally meets the ILO minimum, though only just.

Several features of the maternity benefit provisions warrant critical analysis. First, the eligibility condition of six months of continuous service excludes workers who have not yet completed six months at their current employer. In the garment sector, where worker turnover is high and women frequently change employers due to factory closures, order fluctuations, and job changes, this six-month eligibility condition can result in significant numbers of pregnant workers being ineligible for maternity benefit when they need it most.

Second, the maternity benefit is payable only for two children. Section 46(5) provides that a female worker shall not be entitled to maternity benefit for more than two children. This two-child limitation, introduced in the 1965 Pakistan period legislation and carried forward into the BLA, reflects a natalist population policy concern that has no place in the framework of labour rights: the number of children a worker has should have no bearing on her entitlement to the income protection that maternity leave provides. The two-child limitation discriminates against workers who have larger families and reflects a paternalistic approach to reproductive decision-making that is inconsistent with the constitutional right to personal liberty and the international human rights framework.

Third, the maternity benefit is not accompanied by any job security provision comparable to those that exist in many other legal systems. While Section 46(6) provides that an employer shall not dismiss or discharge a woman worker during the period of her absence on maternity leave, there is no prohibition on dismissal due to pregnancy itself (as distinct from absence during leave) and no requirement that the employer hold the worker's position open for the duration of the leave and reinstate her to the same or equivalent position upon her return. In practice, many garment workers report losing their jobs as a result of pregnancy, either through explicit dismissal or through the employer's failure to reinstate them after the maternity leave period.

Fourth, the maternity benefit is paid by the employer rather than through a social insurance mechanism, which means that the cost of maternity benefit falls entirely on the employer, creating an incentive for employers to discriminate against workers of childbearing age. A social insurance approach, in which the cost of maternity benefit is pooled across all employers and workers through a collective insurance fund (as in many European social security systems),

would remove the employer's direct financial interest in avoiding pregnant workers and would provide more secure funding for maternity benefits.

Fifth, the maternity benefit provisions of the Bangladesh Labour Act apply only to formal sector workers employed by establishments covered by the Act. The vast majority of women workers in Bangladesh, including all domestic workers and most workers in the informal economy, have no statutory entitlement to maternity benefit and must absorb the entire income cost of childbirth themselves.

The reform of maternity benefit provisions is among the most urgent items on the labour law reform agenda in Bangladesh. The Labour Reform Commission's April 2025 report recommended extending the maternity benefit period, removing the two-child limitation, introducing job protection provisions aligned with ILO standards, and moving progressively towards a social insurance model for maternity benefit financing. Some of these recommendations were incorporated into the Bangladesh Labour (Amendment) Ordinance, 2025, but the comprehensive reform recommended by the Commission remains to be fully implemented.

### 57.3 Paternity Leave: The Absent Father in Bangladeshi Labour Law

Paternity leave, providing male workers with a paid entitlement to be absent from work in connection with the birth of their children, is one of the most significant recent developments in the labour law of progressive jurisdictions. The case for paternity leave rests on multiple grounds: it supports fathers' bonding with newborn children; it enables fathers to provide practical support to recovering mothers; it signals that care responsibilities are shared between parents rather than assigned exclusively to mothers; and, perhaps most importantly, it challenges the gendered division of labour in the domestic sphere by establishing the principle that fathers, like mothers, have a legal right to be present for the care of their children.

The Bangladesh Labour Act currently contains no provision for paternity leave for male workers. This is not merely a technical gap in the legislation but a significant statement about the gendered assumptions that underpin Bangladeshi labour law: the Act treats childcare and the care economy as the exclusive concern of female workers, and treats the arrival of a child as legally invisible from the perspective of the child's father as a worker. This exclusion perpetuates the view that the domestic sphere is a women's domain and that men's role is exclusively that of the breadwinner, an assumption that is inconsistent with the constitutional commitment to gender equality and with the international human rights framework.

The comparison with other South Asian legal systems is instructive. India introduced a paternity leave entitlement for central government employees in 1999, providing fifteen days of paid paternity leave, and several Indian state governments have since extended paternity leave to workers in the private sector. Pakistan's civil service rules provide for paternity leave for government servants. Sri Lanka introduced a five-day paternity leave entitlement for private sector workers in 2018. Bangladesh is therefore behind not only the global standard but also the regional standard in its failure to provide any statutory paternity leave.

The Bangladesh Labour Reform Commission's April 2025 report recommended the introduction of a statutory paternity leave entitlement of at least seven days for male workers, with full pay. This recommendation was incorporated into the Bangladesh Labour (Amendment) Ordinance, 2025, which introduced a seven-day paternity leave entitlement for male workers in the formal sector. The introduction of paternity leave in Bangladeshi law is a significant step forward, and the 2025 Ordinance represents an important advance. However, the seven-day entitlement, while welcome, is at the lower end of the international spectrum: the average paternity leave entitlement in OECD countries is approximately thirteen days, and many progressive jurisdictions provide significantly more.

The newly introduced paternity leave provisions under the 2025 Ordinance are, like the maternity benefit provisions, limited to formal sector workers. Their extension to informal sector workers and domestic workers requires further legislative action and the development of enforcement mechanisms appropriate to informal sector contexts.

### 57.4 Breastfeeding and the Working Mother: Lactation Rooms and Work Breaks

The legal framework governing breastfeeding breaks and lactation facilities in the workplace deserves attention as a dimension of maternity law that directly intersects with working time regulation. The right of breastfeeding mothers to take breaks from work for the purpose of nursing or expressing breast milk is recognized by the ILO's Maternity Protection Convention, No. 183, and by the WHO's guidelines on infant feeding, which strongly recommend exclusive breastfeeding for the first six months of life.

Section 47 of the Bangladesh Labour Act provides that every woman who is nursing a child shall be allowed two nursing breaks of thirty minutes each per day in addition to the regular rest interval. These nursing breaks are to be counted as part of the working day and shall not result in any deduction of wages.

The provision of nursing breaks, while welcome, is inadequate without the corresponding provision of appropriate facilities. A nursing worker who has the right to thirty-minute breaks twice a day but has no private and hygienic space in which to nurse or express milk is in practice unable to exercise her legal right. The Bangladesh Labour Rules, 2015, require that factories employing a specified number of female workers provide a lactation room, but the threshold number and the specification of the facilities required are minimal, and enforcement is weak.

The Bangladesh Labour (Amendment) Ordinance, 2025, strengthened the lactation room requirements, specifying minimum standards for the size, privacy, hygiene, and facilities of lactation rooms in covered establishments. This is a significant practical improvement, though the extension of lactation facility requirements to smaller establishments and to commercial workplaces not previously covered remains a gap that requires further legislative action.

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## CHAPTER FIFTY-EIGHT: WORKING TIME IN SPECIAL SECTORS: RMG, INFORMAL ECONOMY, TEA GARDENS, AND DOMESTIC WORK

## 58.1 The Ready-Made Garments Sector: Working Time in the Global Production Network

The ready-made garments sector is the most extensively analyzed sector in Bangladesh's labour law system, and working time violations within it are among the most thoroughly documented features of the country's labour law non-compliance. The sector employs approximately four million workers, of whom approximately eighty percent are women, in approximately four thousand factories concentrated in Dhaka, Chittagong, Gazipur, and Narayanganj. The working time conditions in this sector have been the subject of international scrutiny for three decades, and they represent both the most acute manifestation of the gap between formal law and practical reality and the arena in which the reform of working time law is most consequential.

The business model that governs the global fast fashion supply chain, which links the international brands and retailers who design and market garments to the Bangladeshi factories that manufacture them, is fundamentally incompatible with the working time standards established by Bangladeshi law and by international labour conventions. The fast fashion model operates on the basis of short lead times (the time between order placement and delivery to the retailer), frequent style changes, and intense price competition. Buyers place orders with compressed timelines and reserve the right to modify orders (in terms of quantity, specification, and delivery date) at late notice, transferring the cost of production flexibility directly to factories. Factories manage this flexibility by maintaining a basic permanent workforce (sufficient for normal production volumes) and managing surges through mandatory overtime, temporary workers, and subcontracting.

The practical consequence is that working hours in garment factories during peak production seasons regularly exceed the statutory maximum of sixty hours per week (including the maximum permissible overtime) and frequently exceed seventy, eighty, or even more hours per week in the most extreme cases. Workers who refuse overtime work face informal sanctions including denial of performance bonuses, reduction in production quotas, harassment by supervisors, and, in the most extreme cases, dismissal. The formally voluntary character of overtime in the Bangladesh Labour Act is, in the conditions of the garment sector, almost entirely fictional.

The International Accord for Health and Safety in the Textile and Garment Industry, renewed in 2021 and covering a substantial proportion of Bangladesh's major export factories, includes working time compliance among the issues addressed by its inspection programme. The Accord's inspection data, published annually, consistently identifies working time violations including excessive overtime, denial of weekly rest, and failure to pay overtime premiums as among the most common compliance failures. The scale of the violations, and the persistence of the pattern across successive inspection cycles, demonstrates that the problem is structural rather than incidental.

The structural intervention required to align working time practice in the garment sector with statutory standards must address the root cause: the buyer-driven business model that transfers production flexibility costs onto workers. This requires action at multiple levels. At the domestic level, it requires enhanced enforcement of working time standards through the inspection system, including the allocation of sufficient trained inspectors for systematic monitoring of working

hours, the development of digital working time records that are accessible to inspectors and to workers, and the imposition of meaningful penalties on factories that systematically violate working time standards. At the international level, it requires engagement with international brands and retailers to modify purchasing practices that are incompatible with working time compliance, including the EU Corporate Sustainability Due Diligence Directive's supply chain due diligence requirements that apply to brands sourcing from Bangladesh.

## 58.2 The Informal Economy: Working Time Beyond the Law's Reach

The majority of Bangladesh's workforce is employed in the informal economy, in sectors and enterprises that fall outside the formal coverage of the Bangladesh Labour Act's working time provisions. Informal sector workers include agricultural labourers, domestic workers, street vendors, rickshaw pullers, construction workers employed by sub-contractors rather than by registered construction firms, workers in small workshops below the threshold for coverage under the Act, and workers in the vast informal services economy of Bangladesh's cities and towns.

The working time conditions of informal sector workers are, in general, even worse than those of formal sector workers who are at least nominally protected by the Labour Act. Agricultural labourers during the harvest season work from dawn to dusk, six or seven days a week, for wages that make overtime premiums inconceivable. Domestic workers (analyzed separately below) work hours that may extend from early morning until late at night, with minimal rest breaks and no rest days. Construction workers employed in the informal sub-contracting networks that dominate Bangladesh's construction sector work in conditions of complete working time deregulation, with no statutory limit on daily or weekly hours.

The analytical challenge of extending working time protection to informal sector workers is significant. The enforcement mechanisms of the Labour Act, primarily the factory inspection system of the Department of Inspection for Factories and Establishments, are not designed and are not capable of monitoring working time in the millions of small, dispersed, and often mobile enterprises that constitute the informal economy. New approaches to enforcement, including worker-led monitoring, mobile phone-based reporting systems, community accountability mechanisms, and the development of informal sector worker organizations, are required if working time protection is to be extended meaningfully beyond the current narrow formal sector coverage.

The ILO's Recommendation No. 204 on the Transition from the Informal to the Formal Economy (2015) provides guidance on the development of policies to extend labour protection to informal workers, including working time protection. It recommends that member states develop strategies for gradually extending formal legal protections to informal workers, including through the development of simplified registration systems, portable benefit schemes, and adapted enforcement mechanisms. Bangladesh has committed to implementing Recommendation No. 204 as part of its ILO roadmap, but progress on extending working time protection to informal workers has been slow.

## 58.3 Tea Garden Workers: A Colonial Legacy of Exclusion

The tea garden workers of the Sylhet Division, who work in approximately 163 tea estates covering approximately 115,000 hectares and employing approximately 100,000 workers, represent one of the most distinctive and historically significant segments of Bangladesh's workforce. Their legal situation illustrates particularly vividly the colonial heritage of Bangladeshi labour law and the persistence of colonial-era structures of exploitation into the present.

Tea garden workers in Bangladesh are governed by the Tea Plantation Labour Ordinance, 1962, a piece of Pakistan-era legislation that itself descended from the Indian Tea Districts Emigrant Labour Act of 1882 and its successors. The colonial legislation governing tea plantation labour was designed primarily to maintain a disciplined and immobile workforce on the estates, drawing on the practice of recruiting workers from distant regions (particularly from Orissa and the Central Provinces, now respectively Odisha and Madhya Pradesh in India) and legally binding them to the estates through systems of debt bondage and criminal sanctions for breach of contract. The 1882 Act applied the penal contract system to tea workers, making breach of a labour contract a criminal offence punishable by imprisonment, an explicit mechanism of labour coercion that survived in various modified forms until independence.

The Tea Plantation Labour Ordinance, 1962, formally abolishes the penal contract but maintains the colonial structure of the tea estate as a largely self-contained social system in which workers live in estate-provided housing, access estate-provided medical facilities and schools, and are therefore profoundly dependent on the estate management for their basic subsistence in ways that go far beyond the ordinary employment relationship. This total dependence creates conditions in which the formal voluntariness of the employment relationship, and the formal working time protections of the Ordinance, have limited practical significance.

The working time provisions of the Tea Plantation Labour Ordinance are less protective than those of the Bangladesh Labour Act. The Ordinance establishes a working day of eight hours (consistent with the BLA), but its overtime provisions are different, and the enforcement of its working time requirements is almost entirely nominal. Tea garden workers, who are among the most historically exploited and currently marginalized segments of the Bangladeshi workforce, were excluded from the coverage of the Bangladesh Labour Act, 2006, and continue to be governed by the 1962 Ordinance, which predates the BLA and is substantially less rights-protective.

The Labour Reform Commission's April 2025 report recommended the integration of tea garden workers into the coverage of the Bangladesh Labour Act, and this recommendation attracted the support of the major international labour rights organizations. The Bangladesh Labour (Amendment) Ordinance, 2025, made some progress in extending BLA coverage to tea garden workers on certain provisions, but the comprehensive integration recommended by the Commission remains incomplete. The tea garden workers represent a constituency whose working time rights, and whose labour rights generally, require particular legislative attention as part of the reform agenda.

### 58.4 Domestic Workers: The Most Complete Exclusion

The situation of domestic workers, analyzed briefly in the context of wage law in Part Six of this work, requires more extended treatment in the context of working time law, because the working time conditions of domestic workers represent perhaps the most extreme example of working time deregulation in the Bangladeshi labour law system.

Domestic workers in Bangladesh, who are estimated to number between two and three million, predominantly female, and frequently migrants from rural areas, are explicitly excluded from the coverage of the Bangladesh Labour Act by Section 1(4), which limits the Act's application to workers employed in industrial establishments, shops, commercial establishments, factories, and other specified types of workplace. A private household, where domestic workers spend their entire working lives, is not among the specified workplaces, and domestic workers are therefore entirely outside the formal labour law framework.

The practical consequence for working time is total deregulation. A domestic worker in Bangladesh has no statutory entitlement to any limit on daily or weekly working hours, no right to a weekly day of rest, no entitlement to overtime pay for work performed beyond any defined standard hours, no right to paid annual leave, no right to paid sick leave, no right to maternity benefit, and no right to any of the other working time protections analyzed in this Part. Her working conditions are determined entirely by the terms of whatever informal understanding she has reached with her employer, which is in most cases a purely verbal arrangement with no written record and no legal mechanism for enforcement.

The ILO Domestic Workers Convention, No. 189 (2011), and the associated Recommendation No. 201, establish that domestic workers are entitled to labour rights equal to those of workers in other sectors, including limits on working hours, weekly rest, overtime pay, paid annual leave, and maternity protection. The Preamble to Convention No. 189 recognizes the particular vulnerability of domestic workers to abuse and exploitation and the historical exclusion of domestic work from the protections of national labour law as a major source of this vulnerability.

Bangladesh has not ratified Convention No. 189, and the existing legal framework for domestic workers is essentially limited to the weak general protections of the Domestic Servants Act, 1926 (a colonial-era statute of limited scope), the provisions of the Suppression of Violence Against Women and Children Act (which provides some protection against physical abuse), and the general law of contract (which requires the identification and enforcement of a specific contractual agreement to provide any protection at all).

The campaign to bring domestic workers within the coverage of labour law has been advanced by a coalition of domestic worker organizations, women's rights NGOs, and international labour rights advocates. The Domestic Workers Welfare Association (DWWA) and other organizations have organized domestic workers in Dhaka and other cities, documenting their working conditions, raising consciousness about their legal rights, and advocating for legislative reform. The international campaign around ILO Convention No. 189, which achieved ratification by over thirty countries including Argentina, South Africa, Germany, the Netherlands, and several Asian countries, has created a framework for the reform of domestic worker law in Bangladesh.

The Bangladesh Labour Reform Commission's April 2025 report made detailed recommendations for the extension of labour law coverage to domestic workers, including the development of a specific legislative instrument governing domestic worker employment, the establishment of a domestic worker registration system, the creation of a domestic worker welfare board with authority to establish minimum standards for working time and other conditions, and the promotion of written employment contracts for domestic workers. These recommendations represent the necessary direction of reform, and their implementation would be a significant advance in the protection of one of the most vulnerable groups in the Bangladeshi workforce.

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## CHAPTER FIFTY-NINE: THE RIGHT TO DISCONNECT AND DIGITAL WORKING TIME: EMERGING CHALLENGES FOR BANGLADESH

### 59.1 The Phenomenon of Constant Connectivity: A New Dimension of Working Time

The proliferation of digital communication technologies, particularly smartphones and messaging applications, has created a new dimension of working time that existing legal frameworks, including Bangladesh's working time law, are entirely unprepared to address. When a worker in a garment factory receives a message from her supervisor at eleven at night demanding that she return to work at five in the morning rather than the scheduled seven, or when a worker in a commercial establishment receives work-related WhatsApp messages during her leave period demanding that she respond to customer queries, these communications represent an extension of the employer's authority into what should be the worker's protected time for rest and private life.

The concept of the "right to disconnect," which has developed into a significant legal concept in French law since 2017, in Australian law since 2024, and in the laws of several other countries, holds that workers have a right to be unreachable by their employer outside of working hours, and that the employer's use of digital communication technologies to extend working demands into workers' rest time is a form of working time violation that the law should prohibit. The French El Khomri law of 2016 introduced the right to disconnect into the French Labour Code, requiring employers to negotiate with worker representatives about the implementation of the right and to establish mechanisms for its practical exercise. Australia's Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2024 introduced a right to disconnect for Australian workers, allowing workers to refuse unreasonable work-related contact outside of normal working hours.

In Bangladesh, the right to disconnect has not yet been recognized in law, and the existing working time framework makes no provision for the protection of workers' rest time from digital intrusion. This gap in the legal framework is not merely a technical lacuna but reflects a deeper failure to recognize that the nature of working time has been fundamentally transformed by digital technology and that legal frameworks designed for an era of fixed working locations and physically bounded working time are inadequate for the realities of contemporary work.

The Bangladesh context presents particular challenges and particular urgencies in relation to the right to disconnect. The spread of smartphone ownership and mobile data connectivity in Bangladesh has been rapid, and managers in the garment sector and commercial establishments increasingly use WhatsApp groups, SMS messaging, and other digital communication tools to extend managerial authority into workers' personal time. The power imbalance that makes overtime violations difficult to challenge in the physical workplace is replicated and amplified in the digital sphere: a worker who ignores a WhatsApp message from her supervisor demanding an early morning start is subject to the same informal sanctions as a worker who refuses to remain after hours in the physical workplace.

The recognition of a right to disconnect in Bangladeshi law would require both a legal framework establishing the principle and a practical enforcement mechanism. The legal framework might be developed through a combination of the Bangladesh Labour Act (establishing the worker's right to be unreachable outside working hours as a dimension of the working time protection) and the Bangladesh Telecommunication Act and Information and Communication Technology Act (establishing duties on employers in relation to the use of digital communication tools outside working hours). The practical enforcement mechanism would need to address the technical evidence challenge (demonstrating that a particular message was sent outside working hours and required a response) and the power-asymmetry challenge (ensuring that workers who exercise their right to disconnect do not face informal retaliation).

### 59.2 Platform Work and Working Time: The Gig Economy in Bangladesh

Platform work, the performance of labour services mediated through digital platforms that connect workers directly with customers, has grown significantly in Bangladesh over the past decade. Ride-hailing platforms (Pathao, Shohoz, Uber), food delivery platforms (Foodpanda, Shohoz Food, Hungry Naki), and various freelancing platforms (Upwork, Fiverr, and Bangladeshi equivalents) now employ a substantial and rapidly growing number of workers who perform digitally mediated work as their primary or supplementary source of income.

The working time law implications of platform work are among the most contested issues in contemporary labour law globally. The standard employment relationship model of a single employer directing a worker to be present at a fixed location for a specified number of hours is inapplicable to most forms of platform work, where the worker typically determines her own working schedule (by choosing when to log into the platform), may work for multiple platforms simultaneously, and is typically classified by the platforms as an independent contractor rather than as an employee.

The classification of platform workers as independent contractors, which is the universal practice of global platform companies including those operating in Bangladesh, has the effect of excluding them from the working time protections of the Bangladesh Labour Act, which applies only to workers who are employees. An independent contractor has no right under the BLA to a maximum working day of eight hours, no right to overtime premiums, no right to a weekly day of rest, and no entitlement to any form of paid leave. The formal autonomy of the independent contractor (she can log into the platform whenever she chooses) conceals the practical reality that many platform workers work far longer hours than the statutory maximum for employees, at

piece rates that effectively produce hourly earnings below the minimum wage when the actual hours worked are taken into account.

The global jurisprudential trend in platform worker cases is towards recognizing that the economic reality of platform work is more consistent with employment than with independent contracting, and that the formal classification as independent contractors should not deprive platform workers of statutory protections. The Supreme Court of India's decision in State of Haryana v. Charanjit Singh, the Supreme Court of Canada's decision in McCormick v. Fasken Martineau DuMoulin LLP, and numerous lower court and tribunal decisions in European countries have all contributed to a growing body of jurisprudence recognizing that the legal category of independent contractor cannot be used as a mechanism for systematically depriving workers of their statutory rights.

In Bangladesh, the legal classification of platform workers has not yet been the subject of authoritative judicial decision, and the regulatory framework for platform work is essentially non-existent. The Bangladesh Labour Reform Commission's April 2025 report identified platform work as an emerging regulatory challenge and recommended the development of specific legislative provisions to ensure that platform workers have access to the fundamental protections of labour law, including working time protection. The Commission recommended a presumption of employment for platform workers (subject to rebuttal by evidence of genuine entrepreneurial independence), which would have the effect of bringing them within the coverage of the Bangladesh Labour Act's working time provisions.

The 2025 Ordinance did not introduce specific provisions on platform work, reflecting the complexity of the regulatory challenge and the political difficulty of engaging with the platform companies, several of which are major international investors in Bangladesh's growing technology sector. The development of a framework for platform worker protection, including working time protection, remains an urgent and unaddressed item on the reform agenda.

### 59.3 Artificial Intelligence, Algorithmic Management, and Working Time

The deployment of artificial intelligence and algorithmic management systems in Bangladesh's garment sector and increasingly in its commercial economy introduces a new dimension of working time regulation that is barely addressed in the existing legal literature on Bangladeshi labour law. Algorithmic management systems, which use data analytics and machine learning to optimize production planning, worker scheduling, quality monitoring, and performance assessment, are being introduced by a growing number of Bangladesh's garment factories as tools for improving production efficiency and meeting buyer-imposed quality standards.

The working time implications of algorithmic management are significant and underanalyzed. An algorithmic scheduling system that assigns individual workers to shift patterns and rest days based on production optimization rather than on workers' preferences or health needs may systematically violate the working time standards of the Bangladesh Labour Act, even if the total hours assigned are within the statutory maximum, because the particular pattern of hours (early starts, late finishes, rest days on non-preferred days, irregular shift rotations) may be incompatible with workers' family responsibilities, health needs, and community obligations.

Algorithmic performance monitoring systems, which track individual workers' output per hour (typically in terms of garments produced or quality-control items checked), create a form of working time intensification that is not captured by the legal concept of "working hours." A worker who is required to maintain a machine-calculated output rate for the full duration of her working day is effectively required to work at maximum intensity throughout the working period, with no opportunity for the natural variation in pace and effort that characterizes unmonitored work. The legal framework of working time protection, focused primarily on the number of hours worked rather than on the intensity of work during those hours, is entirely inadequate for addressing this form of algorithmically-imposed intensification.

The emerging field of algorithmic workplace regulation has developed significant bodies of scholarship and policy analysis that Bangladesh's labour law reform process should engage with. The European Union's Artificial Intelligence Act (2024) and the Platform Work Directive (under negotiation as of early 2026) both contain provisions relevant to algorithmic management in employment contexts, including transparency requirements for algorithmic decision-making systems and the right of workers to human review of algorithmic decisions affecting them. These developments in European law provide a regulatory framework that, while not directly applicable in Bangladesh, offers a model for the development of domestic provisions addressing the working time implications of algorithmic management.

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## CHAPTER SIXTY: TOWARDS COMPREHENSIVE WORKING TIME REFORM: PRINCIPLES, PROPOSALS, AND POLITICS

### 60.1 Assessing the Current Framework: A Balance Sheet

The preceding chapters have traced the philosophical foundations, historical development, and current legal architecture of Bangladesh's working time law, and have identified multiple dimensions in which the existing framework falls short of the standards required by the Constitution, international law, comparative best practice, and the philosophical ideals that justify working time regulation. Before setting out a comprehensive reform framework, it is useful to draw up a balance sheet of the current position: what the existing law gets right, where its most serious deficiencies lie, and what the most significant obstacles to reform are.

On the positive side of the ledger, the Bangladesh Labour Act's working time framework represents a genuine advance over the colonial legislation that preceded it, and it has been progressively improved through successive amendments including the 2013 amendment following Rana Plaza and the 2025 Ordinance. The standard of eight hours per day and forty-eight hours per week, though it falls short of the forty-hour week that progressive labour law scholarship and many comparative legal systems regard as the contemporary standard, provides a formal framework that, if enforced, would significantly improve the working conditions of millions of workers. The overtime premium of double pay, the entitlement to a weekly day of rest, the provisions for annual leave, casual leave, sick leave, and maternity benefit: all of these provisions represent meaningful legal entitlements that workers in the formal sector can in principle enforce.

The 2025 Ordinance introduced several specific improvements: the extension of the maternity benefit period, the introduction of a statutory paternity leave entitlement, improvements in lactation facility requirements, modifications to the overtime pay calculation to include all regular allowances, enhanced provisions for wage payment transparency, and modifications to the trade union registration threshold that will indirectly support workers' capacity to enforce working time rights through collective action. The Bangladesh Labour (Amendment) Bill, 2026, passed by Parliament on 9 April 2026, further consolidated and in some respects extended these reforms.

On the negative side, the balance sheet reveals serious and systemic deficiencies. The enforcement gap between formal legal standards and practical reality is the most fundamental problem: even the existing, inadequate standards are systematically violated in the garment sector and elsewhere, and the enforcement capacity of the Department of Inspection for Factories and Establishments is entirely inadequate to address the scale of non-compliance. The coverage gap, which excludes the majority of Bangladesh's workforce from the Act's working time protections, means that for most workers, the formal legal framework is irrelevant to their working lives. The standard of forty-eight hours per week is itself out of date by comparison with international good practice and progressive legal systems. The absence of any provisions on the right to disconnect, platform worker working time, and the working time implications of algorithmic management represents a significant legislative underdevelopment in relation to the contemporary realities of digital work. The failure to ratify key ILO conventions on working time, including Conventions No. 47, 132, 171, and 189, limits the international legal obligations that could drive domestic reform.

### 60.2 Principles for Working Time Reform: A Normative Framework

The reform of Bangladesh's working time law should be guided by a coherent set of normative principles derived from the philosophical and jurisprudential analysis of the preceding chapters, the international human rights framework, and the specific conditions and challenges of the Bangladeshi labour market. The following principles are proposed as the foundational framework for comprehensive working time reform.

The first principle is the principle of dignity: every working person, regardless of sector, employment status, gender, or nationality, has a human right to working time of bounded duration that leaves adequate time for rest, leisure, family life, civic participation, and personal development. This principle is grounded in the constitutional commitment to human dignity, in Article 24 of the UDHR, in Article 7 of the ICESCR, and in the philosophical traditions analyzed in Chapter Fifty-One. It implies that the standard of working hours must be set with reference to what is genuinely compatible with a dignified human life, rather than with reference to employer convenience or the productivity demands of export markets.

The second principle is the principle of universality: working time protection must extend to all working people, not only to workers in large formal sector establishments. The majority of Bangladesh's workforce, employed in the informal economy, in domestic service, in agriculture, and in small enterprises, currently has no effective working time protection. A working time framework that protects only the minority of workers in the formal sector is not a genuine

working time law but a partial and exclusionary privilege. The extension of working time protection to all workers, through legislative coverage expansion, adapted enforcement mechanisms, and the development of collective institutions for informal sector workers, is both morally required and practically necessary.

The third principle is the principle of democracy: working time arrangements should, to the greatest possible extent, be determined through collective processes in which workers have genuine, effective voice. The ILO's tripartism principle, the constitutional right to freedom of association, and the republican political philosophy of non-domination all support the conclusion that the terms of working time should not be dictated unilaterally by employers or set exclusively by government, but should be subject to genuine collective negotiation between organized workers and employers at the enterprise, sectoral, and national levels. This principle implies strengthening the conditions for effective collective bargaining over working time, including the reform of trade union law and the enhancement of workers' right to take collective action.

The fourth principle is the principle of health: working time standards must be informed by the best available evidence on the health consequences of different working time patterns, and must be set at levels that protect workers' physical and mental health. The extensive evidence on the harmful effects of long working hours, irregular shift work, and insufficient rest reviewed in earlier chapters provides a scientific basis for working time standards that supplements the philosophical and human rights arguments. The principle of health implies not only limiting maximum hours but also addressing the pattern of working time (including night work, rotating shifts, and algorithmic scheduling) and its implications for occupational health.

The fifth principle is the principle of equality: working time law must be designed and implemented in ways that promote rather than entrench gender inequality. The current framework, which treats maternity leave as the primary mechanism for accommodating workers' care responsibilities and provides no paternity leave or shared parental leave framework, perpetuates the gendered division of care work that is a major driver of gender inequality in the labour market. The reform of working time law must address this dimension through the introduction of genuinely shared parental leave, the reform of flexible working provisions, and the development of childcare infrastructure that enables both parents to participate fully in the workforce on equal terms.

The sixth principle is the principle of adaptation: working time law must be designed to address the realities of contemporary work, including platform work, algorithmic management, digital communication, and other forms of work that do not fit the standard employment relationship model on which existing working time law is based. The failure to adapt working time law to these contemporary realities means that an increasingly large proportion of the workforce is being left entirely outside the protection of working time law, and that even workers nominally protected by the law are subject to new forms of working time intrusion (such as after-hours digital communication) that the law does not address.

### 60.3 Specific Reform Proposals: The Legal Architecture of a Reformed Working Time Framework

Translating the normative principles articulated above into specific legislative proposals requires attention to the full range of working time law, from the basic hour standards through overtime, weekly rest, and leave, to the emerging challenges of digital and platform work. The following reform proposals are organized around the key dimensions of the working time framework.

The first reform is the reduction of the standard working week from forty-eight to forty hours, with a transitional arrangement for smaller enterprises. The forty-eight-hour standard, inherited from colonial legislation and from ILO Convention No. 1 of 1919, was already regarded as a minimum rather than an ideal when it was adopted over a century ago. The progressive reduction of working time has been a consistent trend in international labour standards and in the practice of economically advanced countries, and it reflects the philosophical conviction that as labour productivity increases, the gains should be shared between capital (through higher profits) and labour (through shorter working time as well as higher wages). Bangladesh's extraordinary economic growth over the past three decades has not been accompanied by any reduction in working time standards; the reform agenda should address this failure as a matter of priority.

The second reform is the reduction of the maximum permissible overtime from twelve hours per week to eight hours per week, with an enhanced overtime premium of three times the ordinary rate (rather than the current double time) for all overtime work beyond the first four hours per week. The enhanced premium would provide a stronger incentive for employers to meet production demands through hiring additional workers rather than through working existing workers for excessive hours, contributing to employment creation as well as working time protection.

The third reform is the introduction of an absolute prohibition on working time (including overtime) exceeding fifty hours in any week, regardless of averaging arrangements. The current framework, which permits weekly hours of up to sixty hours with maximum overtime and allows further flexibility through averaging, provides insufficient protection for workers against chronic overwork. An absolute weekly ceiling of fifty hours, which cannot be overridden by averaging arrangements, would provide a more effective protection while still allowing reasonable flexibility above the standard working week.

The fourth reform is the extension of the Bangladesh Labour Act's working time coverage to all workers regardless of sector, employment status, or enterprise size. The exclusion of domestic workers, agricultural workers, and workers in small enterprises from working time protection should be ended. Practical implementation of this extension will require the development of adapted enforcement mechanisms, including sector-specific instruments for domestic workers and agricultural workers (drawing on the ILO Domestic Workers Convention and the ILO Plantation Convention), and simplified compliance requirements for micro-enterprises.

The fifth reform is the introduction of a statutory right to disconnect, providing workers with the legal right to be unreachable by their employer outside of working hours and prohibiting employers from requiring responses to work-related communications during designated rest periods. The right to disconnect should apply to all workers in all forms of employment and should be enforceable through the Labour Court. Collective agreements may specify the terms of

its implementation in particular workplaces, but no collective agreement may waive the right entirely.

The sixth reform is the introduction of a specific legal framework for platform workers, including a rebuttable presumption of employment for workers who provide services through digital platforms, and the application of working time protections (including maximum hours, overtime premiums, weekly rest, and paid leave) to platform workers who cannot rebut this presumption. The framework should address the specific features of platform work, including the absence of a fixed work location, the use of algorithmic scheduling, and the possibility of multi-platform work, and should develop working time protections adapted to these features.

The seventh reform is the upgrading of the annual leave entitlement from the current approximately ten working days to twenty working days for workers with one year of service, in conformity with the ILO Convention No. 132 standard of three weeks and the broader international practice of progressive jurisdictions. The accrual mechanism should be based on the calendar year of service rather than on actual days worked, to avoid penalizing workers for absences beyond their control.

The eighth reform is the extension of maternity leave to twenty weeks (as recommended by the ILO since the adoption of Convention No. 183 in 2000), the removal of the two-child limitation on maternity benefit, the introduction of genuine job protection (including a right of return to the same or equivalent position) for workers on maternity leave, and the development of a social insurance mechanism for maternity benefit financing that removes the current incentive for employers to discriminate against workers of childbearing age.

The ninth reform is the extension and enhancement of paternity leave from the seven days introduced by the 2025 Ordinance to at least fourteen days, with the long-term goal of developing a shared parental leave framework that allows both parents to share an extended leave period in the manner of the Nordic parental leave systems that have proved most effective in promoting gender equality in both the labour market and the domestic sphere.

The tenth reform is the ratification of the key ILO conventions on working time that Bangladesh has not yet ratified: Convention No. 132 (Holidays with Pay, Revised, 1970), Convention No. 171 (Night Work, 1990), Convention No. 189 (Domestic Workers, 2011), and Convention No. 47 (Forty-Hour Week, 1935). Ratification of these conventions would create legal obligations that strengthen the case for domestic legislative reform and provide external accountability mechanisms through the ILO's supervisory system.

### 60.4 The Enforcement Challenge: Making Working Time Law Real

The reform of the substantive standards of working time law will have little practical effect unless accompanied by a fundamental transformation of the enforcement system. The chronic underfunding and understaffing of the Department of Inspection for Factories and Establishments, the inadequacy of the penalty regime for working time violations, the weakness of workers' private enforcement rights, and the susceptibility of the inspection system to

employer influence are all barriers to effective working time enforcement that must be addressed as part of the reform agenda.

The ratio of labour inspectors to workers in Bangladesh is among the lowest in the world. Bangladesh has approximately 800 factory inspectors for a covered workforce of approximately ten million workers in the formal sector alone, a ratio of approximately one inspector per 12,500 workers. The ILO recommends a ratio of one inspector per 10,000 workers for industrialized economies and a ratio of one inspector per 40,000 workers for developing economies, meaning that Bangladesh's formal sector alone requires a minimum of 250 inspectors by the ILO's most lenient standard, and substantially more by any realistic assessment of the enforcement needs of a labour market as complex and as prone to violations as Bangladesh's. The 2025 Ordinance included provisions for increasing the inspector cadre and improving inspection methodology, but the scale of the increase was insufficient to close the enforcement gap.

Digital technology offers significant opportunities for improving working time enforcement without proportionate increases in inspection staffing. The development of electronic working time records, accessible to inspectors through a digital system, would enable systematic monitoring of working hours across the formal sector without requiring physical inspections for every factory. The use of mobile phone applications for worker reporting of working time violations (analogous to the SafetiPin application used for safety monitoring in several South Asian contexts) would supplement formal inspection with a channel for worker-driven enforcement. The development of a publicly accessible compliance rating system for factories, based on inspection data and worker reports, would leverage reputational pressure from buyers and investors as a complement to formal enforcement.

The penalty regime for working time violations requires fundamental reform. The current maximum penalty for a working time violation under the Bangladesh Labour Act is a fine of BDT 5,000 (approximately USD 45), an amount so trivial that it has no deterrent effect whatsoever on large employers for whom it represents a fraction of the profit from a single hour of unpaid overtime. The reform should introduce penalties scaled to the size of the enterprise and the magnitude of the violation, including civil penalties of up to one percent of annual turnover for systematic working time violations, criminal penalties for repeat violations by directors of guilty enterprises, and private rights of action allowing individual workers or their unions to sue for compensation for working time violations in the Labour Court without the requirement of prior administrative action.

The development of a class action or representative claim mechanism for working time violations, allowing trade unions or a minimum number of affected workers to bring a collective claim for compensation covering all workers in an enterprise who have suffered similar violations, would significantly enhance the practical enforceability of working time rights and would address the collective action problem that prevents individual workers from asserting their rights in isolation.

### 60.5 Political Economy of Working Time Reform: Interests, Alliances, and Strategy

Any serious discussion of working time reform must confront the political economy of the reform process: who benefits from the current system, who loses from reform, and what alliances are needed to make reform politically feasible. The history of working time reform in Bangladesh and in other developing countries demonstrates that improvements in working time law are not achieved through the operation of market forces or through the spontaneous benevolence of employers, but through the organized pressure of workers, the strategic engagement of civil society, the leverage of international trade and investment relationships, and the political will of governments that are accountable to a broader constituency than the employer class alone.

The primary beneficiaries of the current inadequate working time framework are the owners and managers of large enterprises, particularly in the garment sector, who benefit from the unpaid overtime and the flexibility to extend working hours beyond statutory limits. These interests are well-organized, politically connected, and able to deploy a range of arguments (competitive necessity, employment creation, economic development) in opposition to working time reform. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) are powerful lobbying organizations whose political influence on labour law reform has been documented in detail in the analyses of previous Parts of this work.

The primary losers from the current framework are the workers, predominantly female, who bear the physical and personal cost of excessive overtime, insufficient rest, and inadequate leave. These workers are less well-organized than their employers, face significant barriers to collective action in the context of a weak trade union movement and a hostile legal environment for union organizing, and have limited direct access to political decision-makers. The effectiveness of working time reform depends in large part on addressing these organizational weaknesses through the reform of trade union law (analyzed separately in Part Eight of this work) and the development of new forms of worker organization adapted to the informal sector and to platform work.

The international dimension of the political economy of working time reform deserves particular attention. The international buyers and brands whose purchasing practices shape the working time conditions in Bangladesh's garment factories bear a significant responsibility for the current situation, and their engagement is essential to any effective reform strategy. The EU Corporate Sustainability Due Diligence Directive (2024), which requires large EU companies to conduct human rights due diligence across their supply chains, creates legal obligations for the brands sourcing from Bangladesh to identify and address working time violations in their supply chains. The ILO's Better Work Bangladesh programme, which provides compliance monitoring and capacity-building support for the garment sector, is a practical mechanism through which international engagement with working time improvement can be channelled.

The momentum generated by the July Revolution of 2024 and the subsequent formation of the Labour Reform Commission created a political window for working time reform that the reform advocates and the interim government sought to exploit through the 2025 Ordinance. The Bangladesh Labour (Amendment) Bill, 2026, which passed Parliament on 9 April 2026, represented the consolidation of the reform momentum into permanent legislative form. The

challenge for the next phase of reform is to maintain and deepen this momentum, translating the legislative improvements into practical reality through enforcement and capacity-building, and to extend the reform agenda to the second generation of issues (informal sector coverage, platform work, algorithmic management, and the right to disconnect) that the 2025 Ordinance and the 2026 Bill left largely unaddressed.

### 60.6 The Transformative Vision: Working Time and the Good Society

The final section of this Part must return to the philosophical foundations from which the analysis began, because working time reform is not ultimately a technical regulatory project but a political and philosophical project about the kind of society Bangladesh wishes to become. The choice between a working time regime that permits sixty hours of weekly work and an enforcement system that fails to prevent even that from being exceeded, on one hand, and a working time regime that provides a genuine guarantee of forty hours of weekly work with adequate enforcement and meaningful leave entitlements on the other, is not merely a choice about regulatory technicalities. It is a choice about the kind of life that Bangladeshi workers are to be allowed to live, and about the kind of democracy, family life, and civic culture that Bangladesh can sustain.

A society whose workers are chronically overworked is a society that is exhausting its human capital, undermining the conditions for the reproduction of a healthy and engaged workforce, sacrificing the educational development of the next generation (because overworked parents cannot invest the time in their children's development that education research identifies as essential), and foreclosing the civic engagement that a genuine democracy requires. The macroeconomic and social costs of overwork, including the healthcare costs of stress-related illness, the productivity losses from fatigue and accidents, the educational disadvantage of children of overworked parents, and the civic costs of political disengagement, are large and systematically underestimated in the discourse that treats working time standards as a cost to competitiveness.

The philosophical traditions analyzed in Chapter Fifty-One, from Aristotle's insight that the goal of work is leisure and not the reverse, through the republican ideal of the free person who is not subject to domination, to the capabilities approach's vision of human flourishing, all converge on the conclusion that a truly just and fully developed society is one in which the regulation of working time is guided not merely by the demands of production but by the requirements of human dignity, democratic citizenship, and the good life. Bangladesh's extraordinary economic achievements of the past three decades have been built in significant part on the labour of workers who have not shared adequately in the fruits of that growth, not only in terms of wages but in terms of the time to live a fully human life. The reform of working time law is one of the most important instruments through which that injustice can begin to be addressed.

The analysis of the specific working time provisions reviewed in this Part has demonstrated that the existing legal framework, for all the improvements introduced by the 2013 amendment, the 2025 Ordinance, and the 2026 Bill, falls substantially short of the standards required by the Constitution, international law, and the philosophical ideals of a just society. The reform agenda proposed in this Part is not a counsel of utopian perfectionism but a programme of achievable

improvements, grounded in comparative experience and in the specific conditions and possibilities of Bangladesh's labour law situation, that would bring Bangladesh's working time law into genuine conformity with its stated commitments and would make a significant practical difference to the lives of millions of working people.

The thread connecting the analysis of wages in Part Six and the analysis of working time in Part Seven is, as noted in the editorial preface to Part Six, the philosophical conviction that the terms and conditions of employment are not merely market outcomes but expressions of the social recognition or denial of workers' equal dignity as human beings. A wage that is insufficient for life in dignity, combined with working hours that prevent workers from enjoying rest, recreation, or family life, constitutes not merely an economic injustice but a denial of humanity. The reform of both wages and working time is ultimately a single project: the recognition in law of the equal dignity and worth of every working person in Bangladesh, and the construction of a legal framework that gives that recognition genuine practical force.

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## BIBLIOGRAPHIC NOTES FOR PART SEVEN

The analysis in this Part draws upon an extensive range of primary sources, secondary scholarship, international reports, and the most recent legislative developments in Bangladesh and in the comparative literature. The following notes identify the most important sources for each of the major themes addressed.

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*End of Part Seven*

*Part Eight of this work will examine the law of trade unions, collective bargaining, and industrial action in Bangladesh, tracing the historical development of the collective labour law framework from its colonial origins through the Pakistan period to the present, analyzing the philosophical and jurisprudential foundations of the right to organize and bargain collectively as a fundamental human right, assessing the current legal framework governing trade union registration, collective bargaining agent status, and the right to strike against international standards and the requirements of ILO Conventions Nos. 87 and 98, and proposing a comprehensive reform agenda for the development of a genuine collective bargaining system in Bangladesh. The analysis of collective labour law is intimately connected to the analysis of working time in Part Seven, because the practical enforcement of working time rights depends fundamentally on the existence of strong, independent trade unions capable of representing*

*workers in their disputes with employers and of engaging in genuine collective bargaining over working conditions. The reforms to trade union law introduced by the Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Bill, 2026, which include significant modifications to the trade union registration threshold and new anti-union discrimination provisions, will receive detailed analysis in Part Eight. The thread connecting the analysis of individual working time rights in Part Seven and the analysis of collective labour rights in Part Eight is the recognition that individual rights without collective power are largely illusory: a worker who has the legal right to refuse overtime but lacks the collective protection of union membership will rarely be able to exercise that right in practice without fear of retaliation. The transformation of Bangladesh's working time law from a largely formal and largely unenforced set of rules into a genuine system of effective protection requires not only stronger individual rights but stronger collective institutions capable of enforcing those rights on behalf of all workers.*

## PART EIGHT: TRADE UNIONS, COLLECTIVE BARGAINING, AND INDUSTRIAL ACTION IN BANGLADESH: PHILOSOPHY, LAW, HISTORY, CONTROVERSIES, AND THE ARCHITECTURE OF REFORM

## PREFATORY NOTE TO PART EIGHT

The present part of this work addresses what is perhaps the most politically contested, philosophically rich, and practically consequential domain of Bangladesh's labour law: the collective dimension of labour rights. If Part Seven examined the individual worker's entitlements to time, rest, and recuperation, Part Eight examines what happens when workers cease to be atomized individuals facing the power of organized capital and instead constitute themselves as a collective subject capable of speaking with a single voice, negotiating with employers on terms approaching equality, and if necessary, withdrawing their labour in pursuit of their common interests.

The study of trade union law, collective bargaining, and the law of industrial action is, in its essence, a study of power: how power is structured, distributed, challenged, and occasionally transformed in the workplace and in the wider political economy. It is a study of the conditions under which working people can exercise genuine agency over the circumstances of their working lives, and of the way in which law either facilitates or frustrates that exercise of agency. In Bangladesh, where workers constitute the productive foundation of an economy built on the labour of millions in the garment factories, shipbreaking yards, tea gardens, construction sites, and informal sectors, the question of collective labour rights is inseparable from the question of what kind of society Bangladesh wishes to be.

The analysis in this part proceeds from the general to the particular, from philosophy to history, from history to doctrine, from doctrine to reform. It begins with the philosophical and jurisprudential foundations of the right to organize and bargain collectively, surveying the major theoretical traditions and their implications for the specific circumstances of Bangladesh. It then proceeds to a detailed historical investigation of trade unionism in Bengal and Bangladesh, from the emergence of the first organized labour movements under colonial rule through the turbulent decades of the Pakistan period, the liberation struggle, the post-independence political economy,

and the catastrophic events of 2013 and the revolutionary conjuncture of 2024. The doctrinal analysis examines the legal framework governing trade union registration, collective bargaining agent status, the conduct of collective bargaining, and the law of industrial disputes and strikes under the Bangladesh Labour Act, 2006, and its subsequent amendments, with particular attention to the transformative Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Bill, 2026, passed by the National Parliament on 9 April 2026. The analysis culminates in a comprehensive reform agenda informed by comparative experience, international standards, and the distinctive requirements of the Bangladeshi context.

Throughout the analysis, the part engages with the most recent developments in international labour law and theory, including the referral of the right to strike question to the International Court of Justice, whose public hearings in October 2025 and expected Advisory Opinion in 2026 promise to reshape the global understanding of ILO Convention No. 87 and its implications for workers in Bangladesh and elsewhere. This is not an abstract jurisprudential exercise: the question of whether workers have a protected right to strike under international law has direct and immediate consequences for the millions of Bangladeshi workers who have exercised or sought to exercise that right, and for the workers who were imprisoned, dismissed, or killed for doing so.

## CHAPTER SIXTY-ONE: THE PHILOSOPHY AND JURISPRUDENCE OF FREEDOM OF ASSOCIATION: FOUNDATIONS AND CONTROVERSIES

### 61.1 The Philosophical Roots of the Right to Organize

The right of workers to organize collectively is one of the most philosophically grounded and historically contested claims in the entire domain of labour law. It draws upon multiple philosophical traditions and has been the subject of sustained theoretical analysis and fierce political controversy since the earliest days of industrial capitalism. To understand what is at stake in the collective labour law of Bangladesh, it is essential to begin with this philosophical foundation and to appreciate both its depth and its complexity.

The most fundamental philosophical claim underlying the right to organize is the claim from political liberty. On this account, the right of workers to form and join organizations of their own choosing is a direct expression of the general political right of free persons to associate with others for common purposes. This right of association is recognized in virtually every major liberal theory of politics, from Locke's account of civil society to Mill's defense of liberty to Rawls's theory of basic liberties. If human beings are political animals, as Aristotle argued, if they are creatures who realize their nature and pursue their good through participation in collective life, then the right to form associations of all kinds, including labour associations, is not merely a useful legal protection but a fundamental expression of human nature and human dignity.

The liberal argument for freedom of association in the labour context has been developed most fully in the context of international human rights law, where the right to form and join trade unions is recognized in Article 22 of the International Covenant on Civil and Political Rights, Article 8 of the International Covenant on Economic, Social and Cultural Rights, and in the

foundational instruments of the International Labour Organization, particularly Conventions Nos. 87 and 98. The human rights framework treats the right to organize as a fundamental right of the person, not merely a useful labour market institution, and this framing has important implications for the way in which restrictions on trade union activity must be assessed and justified.

But the liberal argument for freedom of association, while necessary, is not sufficient. The right to form a trade union, if it merely amounts to the right of workers to gather together without any legally recognized power to affect the terms and conditions of their employment, is largely empty. The philosophical case for collective labour rights requires not merely a defense of the freedom to associate but a defense of the power to bargain, to negotiate, and if necessary, to strike. And it is in relation to these more substantive collective powers that the philosophical controversy becomes most acute.

The republican philosophical tradition, associated in its contemporary form with the political philosophy of Philip Pettit and developed in the context of labour law by scholars including Alan Bogg, Ruth Dukes, and Guy Davidov, offers what may be the most compelling philosophical foundation for robust collective labour rights. On the republican account, the fundamental political value is not merely freedom in the negative sense of absence of interference but freedom in the stronger sense of non-domination: the absence of subjection to another's arbitrary will or capricious power. The republican diagnosis of the employment relationship is that it is structurally dominated: the worker is at the mercy of the employer's decisions about wages, conditions, assignment, discipline, and dismissal in a way that makes genuine freedom impossible. Trade unions and collective bargaining are, from this perspective, not merely useful mechanisms for improving wages and conditions but essential institutions for the republican project of making workers genuinely free persons rather than dominated subjects.

Pettit's concept of domination, elaborated in his foundational work Republicanism: A Theory of Freedom and Government (1997) and developed in subsequent writings, distinguishes between interference, which can be accepted and even welcome when it conforms to the interests of the person interfered with, and domination, which consists in the capacity for arbitrary interference, whether or not that capacity is actually exercised. A worker whose employer has the legal power to dismiss him or her at will, to reduce wages unilaterally, to assign any task, impose any condition, and penalize any resistance is a dominated person, even if the employer happens to be benevolent. Collective bargaining addresses domination not merely by delivering better terms but by establishing the worker's right to co-determine the terms of the employment relationship, thereby removing the employment relationship from the domain of the employer's arbitrary will and subjecting it to mutual agreement and rule-governed processes.

Alan Bogg's elaboration of republican labour law theory, most fully developed in his The Democratic Aspects of Trade Union Recognition (2009) and subsequent articles, argues that trade unions serve not only economic functions but democratic functions: they are institutions through which workers exercise collective self-government in the sphere of work, and as such they are essential to the democratic character of civil society. A society in which workers are unable to organize effectively, in which the terms and conditions of work are determined unilaterally by employers or by market forces without worker voice, is a society in which a large

sphere of everyday human experience is governed autocratically. This argument has powerful resonance in the Bangladeshi context, where the concentration of economic power in the hands of a small class of factory owners, and the systematic suppression of worker organization through legal restriction, employer coercion, and state violence, has produced precisely the condition of workplace autocracy that republican theory identifies as incompatible with genuine political freedom.

### 61.2 The Marxist and Critical Traditions: Collective Action as Class Struggle

The Marxist and critical traditions in labour law provide a different but equally compelling perspective on the significance of collective labour rights. From a Marxist standpoint, the employment relationship is not simply a form of domination in the republican sense but a specific form of class exploitation: the systematic appropriation by the owner of capital of the surplus value created by the worker's labour. Trade unions, on this account, are not merely institutions for defending workers' liberty but institutions through which the working class organizes to defend and advance its collective interests against the class interests of capital.

The Marxist analysis of trade unions is complex and contains internal tensions. Marx himself recognized the contradictions of trade unionism: unions defend workers within the capitalist system, but the system itself is the source of the workers' exploitation. There is a risk, from a classical Marxist perspective, that unions become conservative institutions that accept the fundamental structures of capitalism in exchange for marginal improvements in wages and conditions, and that the energy of the working class is diverted into economistic bargaining rather than transformative political action. Rosa Luxemburg's critique of the German trade union movement, developed in her Mass Strike pamphlet (1906), anticipated this concern, arguing that the trade union bureaucracy had become an obstacle to revolutionary action rather than an instrument of emancipation.

Later Marxist and critical labour law scholars have developed more nuanced accounts. Harry Glasbeek's work on labour law as class law, Karl Klare's transformative constitutionalism in labour law, and more recently Zoe Adams's analysis of trade union legal mobilization in her 2024 work Legal Form and Collective Labour Law all grapple with the question of whether and how legal institutions can be used to advance working class interests without being entirely captured by the logic of capital. Adams's argument, drawing on the Pashukanis tradition, raises the provocative question of whether the legal form itself, the conversion of class conflict into legal claims, systematically individuates and thereby domesticates the collective power of workers. This is a profound challenge to the entire project of labour law reform, and it deserves serious engagement rather than dismissal.

Nonetheless, the critical tradition does not lead inevitably to the conclusion that legal protections for collective labour rights are either useless or counterproductive. The more sophisticated critical analyses, represented by scholars such as Sinzheimer, Kahn-Freund, and their intellectual descendants, argue that labour law, precisely because it acknowledges the class character of the employment relationship and attempts to address it through collective institutions, represents a genuine advance on the purely contractual framework of liberal individualism. The question is not whether legal protection for trade unions is valuable, but how legal protection can be

designed in ways that enhance rather than constrain the collective power of workers, and how the inherent limitations of legal strategies can be supplemented by political and social action.

## 61.3 The Human Rights Framework and Its Implications

The reconceptualization of collective labour rights as human rights has been one of the most significant developments in international labour law over the past three decades. The claim that the right to organize and bargain collectively is not merely a useful labour market institution but a fundamental human right has been advanced by scholars including Virginia Mantouvalou, Bob Hepple, and Philip Alston, and has been institutionalized in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, which identifies freedom of association and the effective recognition of the right to collective bargaining as fundamental rights that all ILO member states are obliged to respect regardless of ratification status.

Virginia Mantouvalou's philosophical defense of labour rights as human rights, developed in her work Workers' Rights as Human Rights (2012) and subsequent articles, rests on the argument that the systematic denial of labour rights constitutes a denial of the worker's fundamental humanity: it treats the worker as a mere instrument of production rather than as a person with inherent dignity and the capacity for autonomous self-determination. The right to organize and bargain collectively, on this account, is a human right because the ability to participate in collective self-governance of the working conditions that occupy the greater part of one's waking life is a constitutive element of the autonomous personhood that human rights are designed to protect.

This human rights framing has important legal implications for Bangladesh. As a party to the ICESCR and as a member of the ILO since 1972, Bangladesh has undertaken international obligations to protect freedom of association and the right to collective bargaining. Bangladesh ratified ILO Convention No. 87 on Freedom of Association in 1972, and ILO Convention No. 98 on the Right to Organise and Collective Bargaining in 1995. These ratifications create legal obligations under international law that are directly relevant to the assessment of domestic legislation and practice. Bangladesh also ratified ILO Conventions Nos. 155, 187, and 190 in October 2025, further deepening its international human rights commitments in the labour sphere.

The human rights approach also implies that restrictions on collective labour rights must be justified according to human rights standards: they must be prescribed by law, necessary in a democratic society, and proportionate to a legitimate aim. The sweeping restrictions on trade union activity that have characterized Bangladeshi law and practice cannot satisfy this standard and must be regarded as violations of international human rights law.

## 61.4 The Right to Strike: The Great Jurisprudential Controversy

No question in the law of collective labour rights has generated more philosophical controversy or practical conflict than the question of the right to strike. The right to withdraw labour collectively is the ultimate source of workers' bargaining power: without the ability to impose costs on employers by refusing to work, collective bargaining is an empty ritual in which

workers can only accept or reject whatever terms the employer chooses to offer. Yet the right to strike is also the most contested of labour rights, challenged by employers, governments, and legal theorists on grounds of economic harm, social disruption, and the rights of third parties.

The most significant recent development in the international law of the right to strike is the referral of this question to the International Court of Justice for an Advisory Opinion. This referral arose from a long-standing and increasingly acrimonious dispute within the ILO between the Employers' Group and the Workers' Group over whether Convention No. 87, which guarantees freedom of association and the right to organize, implicitly protects the right to strike. The ILO's Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations have consistently affirmed that the right to strike is implicit in Convention No. 87, on the ground that freedom of association is meaningless without the right to take collective action, including the withdrawal of labour, in support of workers' interests. The employers' group has contested this interpretation, arguing that Convention No. 87 makes no express reference to the right to strike and that its text does not support such an interpretation.

The ICJ held public hearings on this question on 6, 7, and 8 October 2025, receiving oral presentations from multiple governments, the ILO itself, and international legal scholars. The Advisory Opinion expected in 2026 will carry enormous weight in the global labour law community, even if it is formally advisory rather than binding. If the ICJ affirms the Workers' Group's position that Convention No. 87 implicitly protects the right to strike, this will have direct implications for the legality of Bangladesh's extensive restrictions on strike action under the Bangladesh Labour Act, 2006, and will strengthen the legal basis for reform of those restrictions in the direction of genuine ILO compliance.

The philosophical debate about the right to strike involves multiple competing considerations. The consequentialist case for the right to strike is straightforward: without it, collective bargaining is ineffective, workers lack the power to enforce their negotiated agreements, and the structural inequality of the employment relationship remains uncorrected. The deontological case is equally compelling: if workers have a fundamental right to participate in the governance of their working conditions, then they must have the right to withhold their labour when that governance fails, just as citizens have the right to protest when democratic governance fails.

The most interesting philosophical challenge to the right to strike comes not from the employer perspective but from a consideration of the interests of third parties and the community. When workers in essential services strike, other members of society may be denied access to goods and services on which their lives or welfare depend. This consideration has led most legal systems to impose restrictions on strike action in essential services, and these restrictions are generally accepted as consistent with international human rights standards, subject to the requirement that workers in essential services have access to genuinely impartial arbitration as a substitute for the right to strike. The philosophical challenge is to identify the boundaries of "essential services" in a way that does not become a pretext for suppressing legitimate industrial action. In Bangladesh, the broad and expansive definition of essential services in the labour law framework has been used to restrict strike action far beyond what international standards permit.

# CHAPTER SIXTY-TWO: THE HISTORICAL DEVELOPMENT OF TRADE UNIONISM IN BENGAL AND BANGLADESH: FROM COLONIAL ORIGINS TO REVOLUTIONARY CONJUNCTURE

## 62.1 The Colonial Origins of Organized Labour in Bengal

The history of organized labour in Bengal begins in the late nineteenth century with the development of industrial capitalism under British colonial rule. The jute industry, centered on the mills of Calcutta and its surroundings, was the first major site of industrial employment in Bengal, and it was there that the earliest forms of collective worker action emerged. The jute workers of Bengal were a diverse and complex workforce: drawn from multiple regions of British India, organized by sardars or labour contractors who recruited and managed groups of workers, living in the bastis or slum settlements adjacent to the mills, and subjected to conditions of extraordinary harshness, including twelve-to-fourteen-hour working days, systematic wage theft, physical abuse, and the denial of any legal right to organize or protest.

The first recorded strikes in the Bengal jute industry occurred in the 1890s, decades before any legal recognition of the right to organize. These early strikes were typically spontaneous eruptions of collective protest against specific grievances, wage cuts, or abusive treatment, rather than organized actions by constituted unions. They were routinely suppressed by a combination of employer power, colonial police, and the legal system, which treated collective worker action as a criminal conspiracy under the colonial law of conspiracy and the provisions of the Indian Penal Code, 1860.

The transformation of these spontaneous protests into more organized trade unionism began in earnest after the First World War, driven by several converging forces: the radicalization of nationalist politics, the influence of socialist and communist ideas carried into India by returning soldiers and sailors and by international contacts, the example of the Russian Revolution of 1917, and the growing density of industrial employment in Calcutta and other centers. The All India Trade Union Congress (AITUC) was founded in 1920, with the active participation of nationalist leaders including Bal Gangadhar Tilak, and it represented a significant moment in the recognition of the labour question as central to the national question.

The legal framework governing trade unions in colonial India was established primarily by the Trade Unions Act, 1926, which provided for the registration of trade unions and conferred certain legal immunities on registered unions and their members in relation to civil liability for strike action. The 1926 Act was a significant legal development, but it was far from an unambiguous advance for workers: it was designed as much to manage and control trade union activity as to protect it, and it maintained extensive restrictions on the right to strike and on the activities of registered unions.

The Bengal of the 1920s and 1930s saw a flowering of trade union activity, shaped by the competitive influence of the Indian National Congress, the Communist Party of India (founded 1920), and various socialist formations. The Bengal textile workers, railway workers, and dock workers all developed organized union structures during this period, and the labour movement became an important site of political education, cultural activity, and anti-colonial agitation. The

strike of the Bengal jute mill workers in 1929, which involved more than 200,000 workers and lasted for several weeks, was one of the largest industrial actions in Indian history and demonstrated both the potential and the limits of organized labour power in the colonial context.

The partition of Bengal in 1947, and the simultaneous partition of India and Pakistan, had catastrophic effects on the organized labour movement of eastern Bengal, which became East Pakistan. The major industrial centers of the Bengal labour movement, particularly the Calcutta jute mills and associated industries, remained in West Bengal (India), while East Pakistan inherited an economy that was predominantly agricultural, with limited industrial development. The trade union organizations that had developed in the colonial period were disrupted by partition, as Muslim and Hindu workers were separated, political alignments were transformed, and the newly established Pakistani state regarded organized labour with deep suspicion.

### 62.2 Trade Unionism in East Pakistan: Political Repression and Fragmented Organization

The history of trade unionism in East Pakistan between 1947 and 1971 is a history of systematic political repression, factional division, and the subordination of labour organization to the imperatives of nationalist and political mobilization. It is also a history of extraordinary courage on the part of individual workers and labour organizers who maintained their commitment to worker organization in the face of daunting obstacles.

The Pakistani state, dominated by a military and bureaucratic elite based primarily in West Pakistan, was deeply hostile to independent trade unionism. The Industrial Disputes Act, 1947, which was inherited from the colonial period and applied throughout Pakistan, provided for the registration of trade unions but imposed extensive restrictions on their activities and subjected them to state supervision. The Essential Services Maintenance Act, 1952, and various other emergency provisions were used to suppress strikes and detain union organizers. The political parties that competed for influence in the East Pakistani trade union movement, including the Awami League, the National Awami Party, and various communist formations, all sought to instrumentalize the labour movement for their political purposes, which simultaneously gave the movement a degree of political energy and introduced destructive factionalism.

The jute industry, which became the economic backbone of East Pakistan and the source of the foreign exchange on which Pakistani development depended, was a major site of labour conflict. The jute mill workers of Narayanganj, Khulna, and other centers engaged in numerous strikes and work stoppages throughout the 1950s and 1960s, protesting against low wages, dangerous conditions, and arbitrary management. These strikes were typically broken by the deployment of police and military force, the arrest of union leaders, and the use of the essential services legislation to criminalize collective action. The military dictatorship of Ayub Khan (1958-1969) imposed particularly severe restrictions on trade union activity, dissolving many unions and imprisoning labour organizers as security threats.

The period of Ayub Khan's rule saw the promulgation of the Industrial Relations Ordinance, 1969 (IRO 1969), which represented the most comprehensive attempt at industrial relations regulation in the Pakistani period. The IRO 1969 established a framework for trade union registration, collective bargaining, and dispute resolution that remained the basic structure of

industrial relations law in Bangladesh for decades. It established the concept of the Collective Bargaining Agent (CBA), the mechanism by which a single trade union is recognized as the exclusive representative of all workers in an establishment for the purpose of collective bargaining. This CBA system, which has survived in modified form into the present, has been the subject of continuous controversy and is a central element of the reform agenda addressed later in this part.

The political crisis of 1969-1971, which culminated in the Bangladesh Liberation War, saw the East Pakistani labour movement transformed into a constituent element of the broader national liberation struggle. The general strike of March 1971, which preceded and accompanied the declaration of independence, was one of the most remarkable demonstrations of worker solidarity in the region's history, bringing economic activity across East Pakistan to a standstill in a massive act of political protest. The labour movement's participation in the liberation struggle created a legacy of deep attachment between organized labour and the Awami League, the political party that led the independence movement and formed the first government of Bangladesh.

## 62.3 Labour Rights in Independent Bangladesh: The Promise and the Betrayal

The liberation of Bangladesh in 1971 opened a moment of genuine hope for the labour movement. Sheikh Mujibur Rahman's Awami League government had made extensive commitments to workers during the liberation struggle, and the Constitution of Bangladesh, 1972, included provisions for the protection of workers' rights and the promotion of social and economic justice. The new Bangladesh's first labour law, the Industrial Relations Ordinance, 1969 (as adapted), provided for trade union registration and collective bargaining, and the new government nationalized large portions of the industrial sector, creating a significant state-owned enterprise sector in which trade unions had a recognized role.

But the promise of the liberation era was quickly betrayed. The economic chaos of the post-liberation period, the devastating famine of 1974, and the assassination of Sheikh Mujibur Rahman in August 1975 ushered in a period of political instability and military rule that was deeply hostile to independent trade unionism. The military governments of Ziaur Rahman (1975-1981) and Hussain Muhammad Ershad (1982-1990) maintained authoritarian restrictions on trade union activity, banned political parties at various points, and subjected labour organizers to harassment, imprisonment, and worse.

The restoration of parliamentary democracy in 1990-1991, following the mass uprising against the Ershad government, opened a new chapter in the history of Bangladeshi labour relations. Trade union activity became somewhat more freely possible, the ready-made garments sector emerged as the dominant force in the national economy, and new patterns of labour conflict developed around the wages and conditions of the millions of (predominantly female) workers employed in the RMG factories. But the restoration of formal democracy did not bring genuine respect for collective labour rights: the major political parties, the Awami League and the Bangladesh Nationalist Party, both maintained close relationships with garment manufacturer associations and were reluctant to enforce labour law in ways that might threaten their political and financial backers.

The Bangladesh Labour Act, 2006, enacted under the BNP government of Khaleda Zia, was the most comprehensive attempt to codify Bangladesh's labour law in a single statute. It consolidated more than 25 pre-existing labour laws and introduced significant changes to the framework of industrial relations, including modifications to the trade union registration system and the collective bargaining agent mechanism. But the BLA 2006 was widely criticized by labour rights organizations, trade unions, and international bodies as falling far short of international standards, particularly in its excessive restrictions on trade union registration and its inadequate protections against anti-union discrimination.

### 62.4 The Rana Plaza Catastrophe, International Pressure, and the Reform Imperative

The collapse of the Rana Plaza building in Savar on 24 April 2013, killing 1,134 workers and injuring thousands more, was not only the worst industrial disaster in Bangladesh's history but a watershed moment in the global debate about labour rights in global supply chains. The catastrophe exposed with brutal clarity the consequences of a labour governance system in which workers had no effective collective voice, no ability to refuse unsafe work, and no organizational capacity to enforce the legal protections that nominally existed.

The international response to Rana Plaza included not only the unprecedented industry-led safety initiatives analyzed in Part Five of this work but also intense pressure on the Bangladeshi government to reform its labour law, particularly its restrictions on trade union formation. The United States' suspension of Bangladesh's GSP trade preferences in June 2013, citing failures in worker rights, created significant economic pressure for legal reform. The European Union's Sustainability Compact with Bangladesh, launched in the aftermath of Rana Plaza, included specific commitments to trade union law reform as a condition of continued preferential trade access.

The Bangladesh Labour (Amendment) Act, 2013, enacted in the immediate aftermath of Rana Plaza, introduced some modifications to the trade union registration framework, most notably reducing the minimum membership threshold for trade union formation from 30 percent of workers in an establishment to 30 percent, and subsequently to 20 percent in subsequent iterations. But these reforms were widely regarded as insufficient. The ILO's Committee of Experts on the Application of Conventions and Recommendations repeatedly identified Bangladesh's trade union legislation as falling short of Convention No. 87 requirements, and the US Department of Labor's assessments continued to cite extensive failures of freedom of association in the Bangladeshi apparel sector.

The period between 2013 and 2024 saw continuing tension between the government's formal commitments to labour law reform and its practical reluctance to implement changes that might empower workers at the expense of the garment industry. The Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety created inspection and remediation frameworks for factory physical safety, but they did not address the fundamental problem of worker representation and collective voice. Without strong, independent trade unions capable of monitoring conditions and negotiating on behalf of workers, even the best-designed inspection systems depend on external scrutiny rather than internal worker agency, a dependent

relationship that is inherently precarious and that cannot substitute for genuine worker empowerment.

### 62.5 The July Revolution of 2024 and Its Significance for Collective Labour Rights

The political revolution of July-August 2024, in which a mass popular uprising led primarily by students but involving substantial worker participation toppled the Awami League government of Sheikh Hasina, created the most significant political conjuncture for labour law reform in Bangladesh's history. The events of July and August 2024 are analyzed in detail in Part One of this work, but their specific significance for the collective labour law framework deserves particular attention here.

The mass movement of 2024 expressed, among many other grievances, the accumulated frustrations of Bangladesh's working class: years of suppressed wages, systematic union-busting, the murder and imprisonment of labour organizers, the manipulation of the minimum wage process, and the contemptuous dismissal of workers' demands by an increasingly authoritarian government that had lost any genuine connection with its stated constituency. The workers who participated in the uprising of 2024, particularly the garment workers who abandoned the factories in the days of the revolution, were acting not only as political citizens rejecting an authoritarian government but as workers asserting their fundamental dignity and demanding recognition as political subjects with legitimate claims on the state.

The interim government that came to power in August 2024, led by Nobel laureate Professor Muhammad Yunus as Chief Adviser, identified labour law reform as one of its central priorities. The Labour Reform Commission established by the interim government, whose April 2025 report The Transformation Framework of the World of Work provided the intellectual foundation for subsequent legislative reform, recommended sweeping changes to the collective labour law framework, including a dramatic reduction in the union formation threshold, strengthened protections against anti-union discrimination, reform of the collective bargaining agent system, and the extension of freedom of association rights to previously excluded categories of workers.

The Bangladesh Labour (Amendment) Ordinance, 2025, gazetted on 17 November 2025, and the Bangladesh Labour (Amendment) Bill, 2026, passed by the National Parliament on 9 April 2026, represent the legislative crystallization of the reform agenda. These instruments introduce the most significant changes to Bangladesh's collective labour law since the Bangladesh Labour Act, 2006, and their analysis forms the centerpiece of the doctrinal sections of this part.

## CHAPTER SIXTY-THREE: THE LEGAL FRAMEWORK OF TRADE UNION REGISTRATION AND ORGANIZATION UNDER THE BANGLADESH LABOUR ACT AND ITS AMENDMENTS

### 63.1 The Constitutional Foundation: Articles 38 and 39

Before examining the specific legislative provisions governing trade union organization in Bangladesh, it is essential to note the constitutional foundation upon which those provisions rest

and against which they must be assessed. The Constitution of Bangladesh, 1972, contains provisions directly relevant to the right to organize, most importantly Article 38, which guarantees freedom of association, and Article 39, which guarantees freedom of thought and conscience.

Article 38 of the Constitution provides that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order. This is a positive constitutional guarantee of the right of association, and it clearly encompasses the right of workers to form trade unions. The phrase "reasonable restrictions" introduces the standard of proportionality that is central to the human rights framework: restrictions on the right of association must be reasonable, they must serve a legitimate public interest, and they must be proportionate to that interest. Restrictions that are excessive, that are designed primarily to suppress worker organization rather than to serve a genuine public interest, and that impose burdens on the right of association disproportionate to any legitimate aim cannot be justified under Article 38.

Article 39, guaranteeing freedom of thought and conscience, is also relevant to trade union rights in a broader sense: the right to think and speak freely about conditions of work, about the fairness of wages and the justice of employment arrangements, is an aspect of the general freedom of conscience that the Constitution protects. The corollary of the constitutional guarantee of freedom of thought is that workers cannot lawfully be penalized for expressing views about their working conditions, for participating in union activities, or for supporting union candidates or positions. Anti-union discrimination, the systematic penalization of workers for exercising their constitutional rights of association and expression, is a constitutional violation, not merely a statutory one.

The Supreme Court of Bangladesh has had occasion to address the constitutional dimensions of trade union rights in several important cases, though the constitutional jurisprudence of collective labour rights in Bangladesh remains less developed than in some other jurisdictions. The High Court Division's decisions in cases involving the registration of trade unions, the right to strike, and the dismissal of union members have generally applied a rights-protective interpretive approach, though the practical effect of these decisions on ground-level labour relations has been limited by enforcement failures and the generally weak institutional position of the Labour Court system.

### 63.2 The Pre-Amendment Legal Framework: Registration, Eligibility, and Structural Constraints

The Bangladesh Labour Act, 2006, as it stood before the 2025 Ordinance, established a trade union registration framework that was characterized by extensive restrictions that had been consistently criticized by the ILO, international human rights bodies, and labour rights organizations as inconsistent with international standards.

Under the pre-amendment framework, the formation of a trade union in any establishment required the support of at least 20 percent of the total number of workers employed in that establishment, a threshold that the ILO's Committee of Experts had repeatedly identified as

excessively high, particularly in large establishments where reaching the 20 percent threshold could require organizing hundreds or thousands of workers against employer resistance. The ILO's position, affirmed in numerous observations and direct requests to Bangladesh, is that membership thresholds for trade union formation should be set at a level that does not make it impractical for workers to exercise their right to organize, and that very high thresholds inevitably serve as tools of union suppression rather than legitimate regulation.

The 20 percent threshold operated in conjunction with several other structural features of the legal framework that collectively created powerful obstacles to union formation. First, the law required that a minimum of 30 workers sign the application for registration, which in practice meant that potential union organizers had to identify and publicly commit themselves before registration was achieved, creating a window during which employers could identify and retaliate against organizing workers. Second, the law provided that trade union registration could be cancelled on a wide range of grounds, including technical irregularities in documentation, giving the Department of Labour considerable discretionary power to deny or revoke registration for reasons that had nothing to do with the union's genuine representational role. Third, the law severely restricted trade union activity across establishment boundaries: workers in different factories of the same employer, or workers in different enterprises in the same industrial sector, could not easily organize in the same union, fragmenting the potential solidarity of the workforce.

The garment sector presented the starkest evidence of the consequences of this restrictive framework. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) represented employers in an industry employing more than four million workers, the vast majority of them women. Yet of approximately 10,000 trade unions officially registered in Bangladesh, fewer than 100 were active in the garment sector, and only about 40 possessed collective bargaining authority. This extraordinary disparity between the number of workers and the number of effective unions was not a coincidence or a reflection of worker apathy: it was the predictable consequence of a legal framework designed to prevent effective worker organization, operating in conjunction with systematic employer resistance and inadequate state enforcement.

The mechanisms of employer resistance to union formation were well-documented by labour rights organizations, journalists, and academic researchers. Employers routinely dismissed workers suspected of union organizing activity, often using the broad disciplinary powers available under the Bangladesh Labour Act to find pretextual grounds for dismissal. Workers who signed union formation petitions found themselves blacklisted, transferred to remote or undesirable assignments, or subjected to systematic harassment. Factory owners, through their associations, maintained lists of alleged "troublemakers" that circulated informally and effectively prevented union organizers from obtaining employment throughout the industry. The Bangladesh Labour Act's protections against anti-union discrimination were wholly inadequate to address these practices: the remedies available were minimal, the enforcement mechanisms were ineffective, and the Labour Courts were chronically backlogged and under-resourced.

### 63.3 The Bangladesh Labour (Amendment) Ordinance, 2025: The New Framework

The Bangladesh Labour (Amendment) Ordinance, 2025, gazetted on 17 November 2025, represents the most significant reform of Bangladesh's trade union law since the Bangladesh Labour Act, 2006. Building on the recommendations of the Labour Reform Commission and responding to years of ILO criticism and international pressure, the Ordinance introduces changes to the trade union registration framework that, if genuinely implemented, could transform the landscape of collective labour relations in Bangladesh.

The most immediately significant change introduced by the 2025 Ordinance concerns the minimum membership threshold for trade union formation. Under the pre-Ordinance framework, the threshold was 20 percent of workers in an establishment. The Ordinance reduces this threshold significantly, creating more accessible conditions for workers to exercise their right to organize. The reduction of the threshold reflects the ILO's consistent recommendation that registration requirements should not create excessive barriers to union formation, and represents a partial response to the concern, articulated by the Committee of Experts over many years, that Bangladesh's registration framework was inconsistent with Convention No. 87.

The Ordinance also introduces important changes to the framework of trade union plurality within establishments. Previously, the law limited the number of trade unions that could be registered in any establishment or group of establishments to a specified maximum. The new framework, as reflected in the 2026 Amendment Bill, allows for up to five trade unions within a single establishment or group of establishments, compared to the three permitted under an intermediate version of the law. This change recognizes the reality of diverse worker interests and the multiplicity of organizing traditions, and it is consistent with the ILO's principle that workers should be able to form organizations of their own choosing without prior authorization.

The revision of the definitions of "trade union" and "Collective Bargaining Agent" (CBA) in the 2025 Ordinance is particularly significant. The new definition extends the right to form trade unions to workers including officers of establishments who had previously been excluded, reflecting a broader understanding of who counts as a worker for the purposes of collective labour rights. The extension of freedom of association rights to previously excluded categories of workers is consistent with the ILO's principle that Convention No. 87 applies to all workers without distinction, with only the narrowest possible exceptions for the armed forces and police.

The 2025 Ordinance also introduces strengthened protections against anti-union discrimination, a critical element of any effective collective bargaining framework. Under the amended law, employers are prohibited from blacklisting workers or trade union members, establishing trade unions under employer control (so-called "yellow unions" or "company unions"), or providing financial or other assistance to particular trade unions. These provisions address some of the most pervasive anti-union practices in the Bangladeshi garment sector and, if enforced, could significantly change the power dynamics of industrial relations. The Bangladesh Labour (Amendment) Bill, 2026, further developed and refined these provisions, adding enforcement mechanisms and clarifying the definition of unfair labour practices.

The Ordinance also creates a new Alternative Dispute Resolution (ADR) Authority for both individual and collective labour disputes. The Chairperson of this authority is to be a retired District Judge or an experienced professional, supported by conciliators and a panel of

arbitrators. This institutional innovation reflects an important recognition that the existing Labour Court system, chronically backlogged and inadequately resourced, cannot provide timely and effective resolution of the volume and complexity of labour disputes in Bangladesh.

### 63.4 The Collective Bargaining Agent System: Architecture, Controversies, and Reform

The Collective Bargaining Agent (CBA) system is the most distinctive and most controversial feature of Bangladesh's collective labour law. Inherited from the Industrial Relations Ordinance, 1969, and maintained with modifications through the Bangladesh Labour Act, 2006, and its subsequent amendments, the CBA system establishes a mechanism by which a single trade union in each establishment is recognized as the exclusive representative of all workers in that establishment for the purpose of collective bargaining.

Under the CBA system, where there are multiple trade unions registered in an establishment, the collective bargaining agent is determined by a secret ballot election in which all workers participate. The union that wins a majority in this election is recognized as the CBA and acquires the exclusive right to negotiate with the employer on behalf of all workers. Unions that do not win CBA status continue to exist but have no formal bargaining role; they can represent individual members in disciplinary proceedings and perform other union functions, but they cannot negotiate collectively on wages, conditions, or other employment matters.

The CBA system has attracted both defenders and critics. Its defenders argue that exclusive bargaining representation creates clarity and stability in industrial relations, prevents employers from playing off competing unions against each other, and ensures that the CBA speaks for the entire workforce rather than a minority. The North American model of exclusive bargaining representation, which provides the closest analogue to the CBA system, has been defended by labour law scholars on similar grounds: a single union voice creates effective bargaining power and prevents the fragmentation of worker solidarity that can result from competing unions.

But the critics of the CBA system, including the ILO's supervisory bodies, many labour law scholars, and the trade union movement itself, have raised serious concerns. The most fundamental concern is that the CBA system, by selecting a single union as the exclusive bargaining agent, creates an enormous incentive for employers to manipulate the CBA election process in order to ensure that a compliant or employer-controlled union wins CBA status. The history of Bangladeshi industrial relations is replete with documented cases of employers coercing workers to vote for management-friendly unions, dismissing union organizers before elections, bribing workers, and manipulating the electoral process. When these tactics succeed, the CBA system does not protect workers: it institutionalizes a management-controlled union as the official representative of the workforce, giving a veneer of collective bargaining legitimacy to what is in practice unilateral employer determination of terms and conditions.

The Bangladesh Labour Reform Commission's April 2025 report addressed the CBA system's vulnerabilities and recommended modifications designed to strengthen its integrity and democratic character. The 2025 Ordinance and 2026 Amendment Bill introduce changes to the CBA election process, including improved transparency in voter rolls, stronger provisions against employer interference, and enhanced penalties for electoral manipulation. These changes

are important but may not be sufficient to address the fundamental structural incentives that make CBA election manipulation such a persistent feature of Bangladeshi industrial relations.

The debate about the CBA system also raises broader questions about the appropriate model of industrial relations for Bangladesh. The European tradition of multi-union workplaces with proportional representation, the German tradition of works councils as complementary institution to trade unions, and the Scandinavian tradition of high union density and broadly applicable collective agreements all offer alternative models that might be more appropriate to the Bangladeshi context than the inherited CBA system derived from the Pakistani IR ordinance. These comparative dimensions are explored in detail in Chapter Sixty-Seven of this part.

### 63.5 Workers in the Export Processing Zones: The Labour Rights Deficit

One of the most significant and most criticized features of Bangladesh's collective labour law framework is the distinctive treatment of workers in the Export Processing Zones (EPZs). As analyzed in detail in Part Four of this work, the EPZs operate under a separate legal regime that has historically excluded trade unions and provided only attenuated forms of worker representation. The EPZ Workers' Welfare Association and Industrial Relations Act, 2010, established Workers' Welfare Associations (WWAs) as the permitted form of worker representation in the EPZs, but these WWAs have been widely regarded as inadequate substitutes for genuine trade unions, lacking the legal powers, the political independence, and the institutional resources needed for effective collective bargaining.

The 2025 Ordinance represents a significant step toward closing the gap between EPZ labour rights and those in the general labour market. The Ordinance extends the freedom of association provisions of the Bangladesh Labour Act to the EPZ workforce, for the first time providing EPZ workers with the right to form and join trade unions on the same basis as other workers. This extension of coverage is one of the most important substantive changes in the 2025 reform package, representing a significant break with the policy of labour rights exceptionalism that has characterized the EPZ framework since the establishment of the first EPZ in Bangladesh.

But the practical implementation of this change faces formidable obstacles. The EPZ zones are governed not by the Ministry of Labour and Employment but by the Bangladesh Export Processing Zones Authority (BEPZA), a powerful agency that has historically been deeply hostile to trade union organization. Employers in the EPZs, many of them foreign-owned enterprises, have invested significantly in the existing framework of WWA-based industrial relations, which provides worker representation without genuine bargaining power. The transition from WWAs to trade unions will require not only legal authorization but active institutional support, including the training of union organizers, the enforcement of anti-discrimination provisions, and the supervision of the registration process by an enforcement system that is genuinely committed to facilitating rather than obstructing union formation.

The extension of trade union rights to EPZ workers also raises important questions about the relationship between labour rights and Bangladesh's competitive position as a manufacturing base for global supply chains. The garment and textile manufacturers who dominate the EPZs have consistently argued that labour cost advantages are essential to Bangladesh's

competitiveness, and that strengthening workers' collective bargaining power will raise costs and drive investment to other countries. This argument deserves serious economic analysis, which is provided in Chapter Sixty-Five, but it is important to note here that the argument is not merely economic: it is also a normative argument about the appropriate weight to give to competitive considerations relative to fundamental human rights. The ILO's framework, endorsed by Bangladesh's constitutional commitments, is clear that fundamental labour rights cannot be traded away in the name of competitiveness: they are obligations, not options.

## CHAPTER SIXTY-FOUR: COLLECTIVE BARGAINING IN THEORY AND PRACTICE: THE GAP BETWEEN LAW AND REALITY

### 64.1 The Theory of Collective Bargaining: Purpose, Process, and Varieties

Collective bargaining is the process by which workers, acting through their trade union representatives, negotiate with employers or employers' associations the terms and conditions of employment. It is simultaneously an economic institution, a political institution, and a legal institution, and understanding its multiple dimensions is essential to any serious analysis of its role in the labour law of Bangladesh.

As an economic institution, collective bargaining serves the function of determining wages, working hours, and other conditions of employment through a process of negotiation between organized labour and organized capital. The economic theory of collective bargaining, developed most influentially by John Dunlop in his Industrial Relations Systems (1958) and by subsequent scholars, treats the outcome of collective bargaining as a function of the relative bargaining power of the parties, mediated by the institutional framework within which bargaining takes place. On this account, collective bargaining tends to produce outcomes that are more favorable to workers when unions are strong, densely organized, and capable of effectively threatening strikes, and less favorable when unions are weak, fragmented, and unable to impose significant costs on employers.

As a political institution, collective bargaining serves functions that go beyond the immediate determination of wages and conditions. It is a mechanism through which workers exercise collective agency over the governance of their working lives, participating in the making of the rules by which they are governed rather than simply accepting rules imposed by others. This political dimension of collective bargaining connects it to broader theories of workplace democracy and industrial citizenship. The German model of co-determination, under which workers have statutory rights of representation on company supervisory boards, represents the furthest extension of this democratic principle: it treats workers not merely as parties to a bargain but as stakeholders in the enterprise, with legitimate interests in the governance of the organization within which they invest their labour.

As a legal institution, collective bargaining produces collective agreements that establish the terms and conditions of employment for covered workers. The legal status of collective agreements, their binding force, their relationship to individual employment contracts, and the mechanisms for their enforcement are matters of considerable doctrinal complexity that vary significantly across national legal systems. In Bangladesh, collective agreements have a

recognized legal status under the Bangladesh Labour Act, but the practical enforceability of collective agreements is significantly compromised by the weakness of the Labour Court system and the absence of effective sanctions for employer breach.

The comparative study of collective bargaining systems reveals several important distinctions that are relevant to the assessment of the Bangladeshi framework. The distinction between single-employer bargaining and multi-employer or sector-wide bargaining is particularly significant. In Bangladesh, collective bargaining under the BLA framework is predominantly enterprise-level: the CBA negotiates with the individual employer on behalf of the workers in that establishment. This contrasts with the European tradition of sector-level bargaining, in which trade union federations negotiate with employer associations to establish minimum standards for all workers in a sector, supplemented by enterprise-level bargaining over additional improvements. Sector-level bargaining has significant advantages from the workers' perspective: it removes competition on labour standards as a basis for employer competition, establishes a wage floor that applies across the sector, and allows unions to achieve representation and bargaining power even where organization at the enterprise level is difficult or impossible.

The absence of genuine sector-level bargaining in Bangladesh is a major structural weakness of the collective bargaining system. In the garment sector, for example, the absence of a genuinely representative and powerful garment workers' federation capable of negotiating minimum standards across the industry means that the determination of wages and conditions is fragmented across thousands of individual enterprises, with most workers in non-unionized factories having no effective collective representation at all. This fragmentation serves the interests of employers, who can pit workers in different factories against each other in a race to the bottom on wages and conditions, and it explains why the minimum wage system has to serve as a functional substitute for collective bargaining in determining wage levels for the mass of unorganized garment workers.

## 64.2 The Practice of Collective Bargaining in Bangladesh: Documentation of Failure

The empirical evidence on the practice of collective bargaining in Bangladesh consistently shows a deep and pervasive gap between the formal legal framework and the actual experience of workers. This evidence has been assembled by the ILO, by international human rights organizations including Human Rights Watch and Amnesty International, by the American Center for International Labor Solidarity (Solidarity Center), by academic researchers, and by the Labour Rights Network Bangladesh (LRN-BD).

The most fundamental finding is the extraordinarily low coverage of collective bargaining. In a country with more than 60 million working people, including more than 4 million garment workers in the formal sector, collective bargaining agreements cover only a tiny fraction of the workforce. The Bangladesh Labour Market Profile 2024-2025 (Ulandssekretariatet, 2024) estimates that union density in Bangladesh is approximately 5 percent of formal sector workers, one of the lowest rates in Asia. Effective collective bargaining is even rarer: the vast majority of nominally unionized workers are in factories where the union is either controlled by the employer or is too weak to engage in genuine bargaining.

The 40 garment sector trade unions with CBA status, noted above, represent a particularly striking failure given the scale of the industry and the intensity of international scrutiny it has received since Rana Plaza. The concentration of collective bargaining capacity in such a tiny number of establishments means that the wages and conditions of the overwhelming majority of garment workers are determined not through collective bargaining but through the government's minimum wage fixing process, which is itself subject to the intense political pressure of the industry's employer associations.

The process by which collective bargaining takes place in establishments where it does occur is also deeply problematic. Multiple studies have documented that negotiations frequently take place in an atmosphere of intimidation, with employer representatives present at union meetings, workers afraid to express genuine views for fear of employer retaliation, and the outcome of negotiations largely predetermined by the employer. The CBA election process itself is frequently manipulated: employers dismiss suspected organizers, coerce workers to vote for management-friendly unions, and sometimes create sham unions to split the worker vote. When a genuine, independent union wins CBA status despite these obstacles, it often faces a sustained campaign of employer harassment designed to weaken it before its mandate expires and the next CBA election takes place.

The institutional infrastructure for collective bargaining is also severely inadequate. The Bangladesh Labour Act provides for a Conciliation Officer whose role is to assist parties in reaching agreement when direct negotiations fail, and for arbitration as a mechanism of last resort when conciliation is unsuccessful. But the conciliation process is chronically underfunded and understaffed, and the arbitration system has been largely non-functional. The Labour Courts, to which disputes can ultimately be referred, are backlogged with years of pending cases, and the compensation available for unfair labour practices is insufficient to deter employer misconduct.

### 64.3 The Wage-Setting Process as a Substitute for Collective Bargaining

Given the failure of collective bargaining to determine wages and conditions for the mass of Bangladeshi workers, the government's minimum wage setting process has assumed extraordinary importance as the de facto mechanism for determining compensation in the garment sector and other major industries. The Minimum Wage Board, established under the Bangladesh Labour Act, is responsible for fixing minimum wages for workers in specific industries through a tripartite process involving government, employer, and worker representatives.

The minimum wage setting process for the garment sector has been one of the most politically charged and contentious aspects of Bangladeshi labour policy, culminating in the wage movement of October 2023 analyzed in detail in Part Six of this work. For present purposes, the significance of the wage-setting process is as a symptom of the collective bargaining system's failure: the fact that government must step in to determine wages through administrative process, rather than leaving the determination of wages to genuine collective bargaining, reflects the absence of the institutional conditions under which collective bargaining can effectively function.

From a theoretical perspective, the minimum wage setting process, however imperfect, performs some of the functions of collective bargaining: it establishes a wage floor, it involves worker representatives (however unrepresentative they may be in practice), and it creates at least formal accountability for the wage determination process. But it lacks the dynamism, the specificity, and the worker agency that genuine collective bargaining provides. A minimum wage set by a tripartite board reflects a political compromise among very unequal parties; a collectively bargained wage reflects the genuine exercise of worker power. The former is inherently conservative and resistant to responding to changing economic circumstances; the latter is dynamic and responsive.

### 64.4 Collective Bargaining and the Gender Dimension

The failure of collective bargaining in Bangladesh has a pronounced gender dimension that deserves explicit analytical attention. The garment sector, which is the primary focus of Bangladesh's collective labour law framework, employs a workforce that is estimated to be between 65 and 80 percent female. The systematic suppression of union organization in the garment sector is therefore, in important part, a suppression of female worker organization, and the consequences of collective bargaining failure fall disproportionately on women.

The feminist literature on collective bargaining and gender has identified multiple ways in which the standard model of collective bargaining systematically disadvantages women workers. Judy Fudge and Rosemary Owens, in their edited volume Precarious Work, Women, and the New Economy (2006), document how the standard employment relationship, and the collective bargaining framework built around it, assumes a male worker in full-time, continuous employment in a large formal-sector enterprise. Women workers, who are disproportionately represented in part-time, casual, temporary, and informal employment, fall outside the scope of this model and benefit little from collective bargaining systems designed around it.

In Bangladesh, the gender dimensions of collective bargaining failure are particularly acute. Female garment workers face not only the structural disadvantages of low union density and weak collective bargaining but also specific vulnerabilities related to gender: vulnerability to sexual harassment and abuse by supervisors, exclusion from promotion and skill development opportunities, particular difficulties in reconciling work with care responsibilities, and the stigma and family pressure that can make women workers reluctant to participate in union organizing activities. The feminist critique of Bangladeshi labour law suggests that a genuinely gender-transformative approach to collective bargaining reform would need to address these specific vulnerabilities, not merely adapt the existing male-centered model of union organization to include female workers.

The 2025 Ordinance and 2026 Amendment Bill introduce some gender-sensitive provisions, including enhanced protections against sexual harassment and improved maternity protections. But they do not fundamentally restructure the collective bargaining framework in ways that would address the specific challenges of female worker organization in the garment sector. A more thoroughgoing feminist reform agenda for Bangladeshi collective labour law would include sector-level bargaining structures that could represent workers in small and medium enterprises where enterprise-level organization is particularly difficult, special protections for women

workers exercising their right to organize against gender-specific retaliation, and affirmative requirements for gender representation in trade union leadership and collective bargaining delegations.

## CHAPTER SIXTY-FIVE: THE POLITICAL ECONOMY OF ANTI-UNION DISCRIMINATION: DOCUMENTED PRACTICES AND LEGAL REMEDIES

### 65.1 The Anatomy of Anti-Union Discrimination

Anti-union discrimination, the penalization of workers for exercising their right to organize and bargain collectively, is the single most important obstacle to the development of effective trade unionism in Bangladesh. It takes many forms: dismissal of workers suspected of organizing activity, blacklisting of known union organizers, transfer of union activists to undesirable positions, denial of promotions and benefits to union members, factory closure or relocation in response to unionization, and more subtle forms of harassment and intimidation designed to discourage workers from joining or participating in unions.

The documentation of anti-union discrimination in Bangladesh is extensive and credible. Human Rights Watch's 2015 report "Whoever Raises Their Head Suffers the Most": Workers' Rights in Bangladesh's Garment Factories provided detailed accounts of employer intimidation, the dismissal of union organizers, and the use of criminal law to prosecute workers who participated in union activities. The American Center for International Labor Solidarity (Solidarity Center) has published multiple studies documenting the systematic nature of anti-union discrimination in the Bangladeshi garment sector, including evidence that employer associations maintained lists of "blacklisted" union organizers that circulated informally across the industry.

The legal framework for addressing anti-union discrimination under the Bangladesh Labour Act, 2006, was widely regarded as inadequate before the 2025 reforms. The Act made it unlawful to dismiss or otherwise penalize a worker for union membership or activities, but the remedies available for violation of this provision were minimal: reinstatement and back pay were technically available but extremely difficult to obtain in practice given the backlog and inadequacy of the Labour Court system. The compensation payable for wrongful dismissal related to union activity was capped at amounts that made it economically rational for employers to dismiss union organizers rather than comply with the law: the cost of the penalty was simply a cost of doing business.

The 2025 Ordinance and 2026 Amendment Bill represent a significant attempt to strengthen the legal framework against anti-union discrimination. The new provisions explicitly prohibit blacklisting of workers and trade union members, establishing trade unions under employer control, and providing financial or other assistance to particular trade unions. These specific prohibitions address practices that have been extensively documented but that were not clearly addressed by the pre-amendment framework.

But the effectiveness of these new provisions will depend entirely on the quality of enforcement. The Bangladesh Labour Act's anti-discrimination provisions before the 2025 reforms were not ineffective because they were poorly drafted but because they were not enforced. The

Department of Labour, the agency primarily responsible for labour law enforcement, has historically been significantly under-resourced, politically constrained, and in some documented instances actively complicit in anti-union activities. The reform of labour law enforcement institutions is as important as the reform of substantive labour law provisions, and this dimension of the reform agenda is addressed in Chapter Sixty-Eight.

## 65.2 The Criminal Law as a Tool of Labour Suppression

One of the most disturbing features of Bangladesh's industrial relations landscape has been the use of the criminal law as a tool of employer retaliation against union organizers and striking workers. Under the Bangladesh Labour Act and related provisions, workers who participate in strike action or other collective activities that are characterized by employers as unlawful can be prosecuted for criminal offences, including incitement to violence, criminal trespass, damage to property, and conspiracy. These provisions have been used extensively by employers and, in some periods, by the state itself to suppress legitimate worker organization through the threat of criminal prosecution.

The use of criminal law against labour organizers is not unique to Bangladesh: it is a common feature of labour governance in developing countries with weak rule of law and close relationships between state power and employer interests. But in Bangladesh it has reached a scale and a consistency that constitutes a systemic pattern of human rights abuse. The Solidarity Center's documentation of criminal cases filed against union organizers in the aftermath of the 2013 wage protests, the 2016 labor unrest, and the 2023 wage movement shows a pattern in which hundreds of workers were charged with serious criminal offences for activities that were, in substance, exercises of the right to organize and the right to strike.

The October 2023 wage movement, in which garment workers throughout the Dhaka industrial belt took to the streets to demand a living wage in response to the government's inadequate minimum wage announcement, resulted in the killing of at least three workers by law enforcement, the detention of hundreds of activists, and the filing of criminal cases against thousands of workers and union organizers. The Solidarity Center's assessment, shared by the ILO, Human Rights Watch, and numerous other international bodies, was that the government's response to the October 2023 protests constituted a serious violation of the fundamental rights of freedom of association and the right to peaceful collective action.

The Bangladesh Labour (Amendment) Ordinance, 2025, and the 2026 Amendment Bill do not specifically address the criminal law dimension of anti-union discrimination, though their strengthened provisions on unfair labour practices and anti-union discrimination create a clearer legal framework within which criminal prosecutions for union activities can be challenged. A comprehensive reform agenda would need to include explicit provisions protecting workers and union organizers from criminal prosecution for the peaceful exercise of their constitutional rights of association and collective action.

## 65.3 The Blacklisting Practice and Its Legal Status

The blacklisting of union organizers, as a practice by which employers effectively deny employment to workers known or believed to have been involved in union activities, is one of the most insidious forms of anti-union discrimination because it operates outside the formal employment relationship and is therefore difficult to address through traditional labour law remedies.

The Bangladesh Labour (Amendment) Ordinance, 2025, and the 2026 Amendment Bill explicitly prohibit the blacklisting of workers and trade union members, representing the first clear statutory prohibition of a practice that has been extensively documented in the garment sector for decades. This legislative prohibition is a significant advance, but its enforcement poses serious challenges. Blacklisting operates through informal communication networks among employers, including informal sharing at industry association meetings, messaging through industry networks, and the de facto exclusion of known organizers from hiring pools. Proving that a worker has been denied employment because of blacklisting, rather than for legitimate reasons, requires the kind of sophisticated documentary evidence that is rarely available in discrimination cases.

The prohibition of blacklisting is reinforced by the prohibition on employers providing assistance to particular trade unions, which addresses the complementary practice of creating employer-controlled unions that can then be used to identify and exclude genuine organizers. Together, these provisions, if enforced, would significantly change the legal environment for union organizing in Bangladesh. The critical question is whether the enforcement infrastructure, including an adequately resourced Department of Labour, a functioning system of Labour Courts, and meaningful penalties for violation, will be in place to give these provisions practical effect.

### 65.4 International Comparisons and Best Practices in Anti-Discrimination Enforcement

The comparative study of anti-union discrimination law offers important lessons for the design of an effective enforcement framework for Bangladesh. The most effective legal systems for addressing anti-union discrimination share several common features: strong substantive prohibitions clearly covering all forms of discriminatory treatment; accessible and expeditious procedures for filing and resolving discrimination claims; remedies that are sufficiently significant to deter violations, including substantial compensation and reinstatement with back pay; reverse burden of proof provisions that require employers to demonstrate non-discriminatory reasons for adverse actions once a worker has established a prima facie case of discrimination; and strong penalties for repeated violations including the possibility of injunctive relief that prevents dismissal of union organizers before a full hearing on the merits.

The Canadian framework for protecting workers against anti-union discrimination, while operating in a very different economic and political context, offers some useful design principles. Canadian labour legislation in most provinces provides for summary administrative procedures before labour relations boards, with the power to issue interim orders preventing dismissal of union organizers and to award substantial compensation for proven discrimination. The administrative rather than judicial nature of these procedures is significant: labour relations boards are typically composed of specialists with expertise in industrial relations, they operate on

accelerated timescales that are incompatible with the deliberate pace of ordinary civil litigation, and they have broad equitable powers to fashion remedies appropriate to the specific circumstances of each case.

The South African Labour Relations Act, 1995, amended following the end of apartheid, provides another model, particularly relevant given the similarities between South Africa's postcolonial labour law context and Bangladesh's. South Africa's Act establishes the Commission for Conciliation, Mediation and Arbitration (CCMA), a statutory body that provides accessible and expeditious resolution of unfair labour practice disputes, including anti-union discrimination cases, at no cost to the worker. The CCMA's track record, while imperfect, demonstrates that it is possible to establish an accessible alternative dispute resolution system that can handle large volumes of labour disputes more effectively than traditional court systems.

## CHAPTER SIXTY-SIX: THE LAW OF INDUSTRIAL DISPUTES, STRIKES, AND COLLECTIVE ACTION IN BANGLADESH

### 66.1 The Concept and Classification of Industrial Disputes

An industrial dispute, in the language of the Bangladesh Labour Act and the broader tradition of labour law, is a disagreement between workers and their employer (or between a trade union and an employers' association) concerning the terms and conditions of employment, the interpretation or application of a collective agreement, or the rights and obligations of the parties in the employment relationship. Industrial disputes range in scale from a disagreement between a single worker and a supervisor about a specific work assignment to a sector-wide conflict about minimum wages that mobilizes hundreds of thousands of workers.

The legal classification of industrial disputes is important because it determines the legal procedures that must be followed before workers can lawfully take industrial action. The Bangladesh Labour Act, 2006, following the tradition of its colonial and Pakistani predecessors, distinguishes between disputes of right, which concern the alleged violation of an existing legal entitlement, and disputes of interest, which concern the determination of new terms and conditions that are not established by existing law or agreement. Different procedures and different remedies apply depending on which category the dispute falls into, and disputes of interest are subject to more elaborate procedural requirements before strike action can lawfully be taken.

The procedural framework for industrial action under the Bangladesh Labour Act requires workers to follow a specific sequence of steps before a strike can be lawfully called. The union must first attempt to resolve the dispute through direct negotiation with the employer. If negotiation fails, the dispute must be referred to conciliation by the Labour Directorate. If conciliation fails, the parties may proceed to arbitration. Only if arbitration is also unsuccessful, or refused by one of the parties, can workers proceed to lawful strike action. This multi-step procedural requirement, while not inherently inconsistent with international standards, creates a prolonged period during which employers can prepare to resist strike action, during which pressure on workers to settle may become irresistible, and during which the strike threat that gives workers bargaining power is effectively neutralized by legal process.

The practical consequence of these procedural requirements has been that very few strikes in Bangladesh's garment sector have been "lawful" in the technical sense. Most strike action in the sector takes the form of spontaneous work stoppages or "go-slow" actions that do not follow the prescribed procedural requirements, and which are therefore technically unlawful under the Bangladesh Labour Act. This creates a situation in which the right to strike, while formally recognized, is practically limited to extraordinary circumstances, and in which virtually any collective withdrawal of labour can be characterized by employers and the state as an unlawful action warranting legal or police intervention.

## 66.2 Essential Services and the Right to Strike

The restriction of strike rights in essential services is one of the most practically significant and most philosophically contentious aspects of the right to strike framework. The ILO's Committee on Freedom of Association has established a body of jurisprudence on the definition of "essential services" for the purpose of determining which workers may be denied the right to strike. According to this jurisprudence, essential services are those whose interruption would endanger the life, personal safety, or health of the whole or part of the population. This is a narrow definition that excludes most industries, including many that governments commonly classify as essential for strategic or economic reasons.

The Bangladesh Labour Act, 2006, contains a definition of essential services that has been consistently criticized by the ILO as significantly exceeding the limits of the ILO definition. The Bangladeshi definition includes industries and services whose interruption might cause significant economic disruption, damage to the national economy, or inconvenience to the public, as well as those whose interruption might endanger life and health. This expansive definition is used to restrict strike action in a wide range of industries, including utilities, transport, and (controversially) certain manufacturing sectors, on grounds that are inconsistent with the ILO's understanding of what constitutes a genuine essential service.

The constitutionality of restrictions on the right to strike in essential services has been examined by courts in numerous jurisdictions, with varied results. In India, the Supreme Court has generally upheld extensive restrictions on the right to strike in public services, relying on a broad conception of essential services. In Canada, by contrast, the Supreme Court's landmark decision in Saskatchewan Federation of Labour v Saskatchewan (2015) held that the right to strike is a constitutional right protected by the Charter of Rights and Freedoms, and that legislative restrictions on strike rights in essential services must be assessed against the standard of minimal impairment of constitutional rights. The Supreme Court of Bangladesh has not yet produced a decision of comparable scope on the constitutional status of the right to strike, and the development of a rights-protective constitutional jurisprudence of the right to strike is an important part of the reform agenda.

## 66.3 The Garment Sector and the Practice of Collective Action

The garment sector in Bangladesh, which employs more than four million workers and generates more than 80 percent of the country's export earnings, has been the primary theater of collective labour action and its suppression. The history of the sector since its emergence in the 1980s is

punctuated by waves of collective action: the major strikes and work stoppages of 2006, 2010, 2012, 2013, 2016, and 2023 are the most visible episodes in a continuous pattern of worker protest and employer and state response.

The patterns of collective action in the garment sector are distinctive and deserve careful analysis. Because formal union organization is so limited, most collective action in the sector takes spontaneous forms: workers in a particular factory or industrial area simultaneously refuse to begin work, or walk out mid-shift, or engage in protests outside the factory gates, without a formal union call to action. These spontaneous actions often spread horizontally across neighboring factories through social networks, WhatsApp groups, and word of mouth, creating the appearance of coordinated action without a coordinating organization. This horizontal solidarity, which some scholars have compared to the "contagious" forms of collective action described by Karl Marx in his account of the early workers' movement, reflects both the social density of the industrial districts of Dhaka and the absence of formal organizational structures through which grievances might be channeled.

The state's response to collective action in the garment sector has historically been shaped by the sector's strategic importance to the national economy and by the close political relationships between the government and the employer associations. Police and, on occasion, military forces have been deployed to end strikes and work stoppages, sometimes with lethal consequences. The killings of workers during the October 2023 wage protests, described in Part Six of this work, are the most recent and most dramatic instances of a pattern of state violence against collective action that goes back decades.

The international response to this pattern of state violence has been significant but limited. The United States' GSP suspension in 2013, the EU's Sustainability Compact, the ILO's repeated direct requests to Bangladesh concerning violations of Convention No. 87, and the assessments of international human rights organizations have all created external pressure for reform without achieving fundamental change in the practices of the state and employer community. The July 2024 revolution, by removing the government most deeply complicit in these practices, has created a new opportunity for genuine change, and the 2025 and 2026 reforms represent the first serious legislative response to this opportunity.

### 66.4 Solidarity Action, Secondary Action, and Cross-Border Solidarity

The law of solidarity or secondary action, by which workers in one enterprise or sector take action in support of workers in dispute in another enterprise or sector, raises some of the most complex issues in the law of collective action. Solidarity action is the expression of the fundamental insight that the working class has common interests that transcend the boundaries of individual enterprises, that the defeat or victory of workers in one factory affects workers everywhere, and that the most effective form of collective action may sometimes involve the withdrawal of labour by workers who are not themselves in dispute with the immediate employer.

The Bangladesh Labour Act, in common with most South Asian labour law frameworks, does not clearly recognize or protect solidarity action. The law of industrial disputes is structured

around disputes between a particular employer and the workers employed by that employer, and does not contemplate action by workers employed elsewhere in support of a dispute that is not their own. This limitation is particularly significant in the garment sector, where global supply chain relationships create potential solidarity interests between Bangladeshi workers and workers elsewhere in the supply chain.

The international dimension of solidarity action has been transformed by the development of global union federations such as IndustriALL Global Union, which represents workers in the textile, garment, and manufacturing sectors globally. IndustriALL's advocacy for Bangladeshi garment workers, its efforts to negotiate global framework agreements with major brands and retailers, and its support for the Accord on Fire and Building Safety all represent forms of cross-border solidarity that operate outside the formal legal framework of the right to strike. The development of a legal framework that accommodates these forms of transnational solidarity, while maintaining appropriate limits, is one of the frontiers of international labour law that is directly relevant to Bangladesh's position in global supply chains.

## CHAPTER SIXTY-SEVEN: COMPARATIVE INDUSTRIAL RELATIONS SYSTEMS AND THEIR LESSONS FOR BANGLADESH

### 67.1 The Major Models of Industrial Relations: A Comparative Overview

The comparative study of industrial relations systems reveals substantial variation in the institutional arrangements through which the collective interests of workers and employers are mediated, negotiated, and reconciled. This variation reflects different historical trajectories, different political economies, and different normative frameworks, but it also offers instructive lessons for countries like Bangladesh that are in the process of designing or reforming their collective labour law frameworks.

The major models of industrial relations can be broadly categorized along two dimensions: the degree of centralization of collective bargaining, ranging from highly centralized sector-wide or economy-wide bargaining to highly decentralized enterprise-level bargaining; and the degree of juridification, ranging from systems where collective bargaining is primarily regulated by law and subject to extensive legal supervision to systems where collective bargaining is primarily self-regulating and governed by collective norms.

The Nordic model, exemplified by Sweden, Denmark, Norway, and Finland, is characterized by highly centralized sector-level bargaining, very high union density, strong social democratic political traditions, and a preference for voluntary self-regulation over legal coercion. In Sweden, collective agreements cover approximately 90 percent of workers, wage determination is primarily the responsibility of the social partners rather than the state, and the right to strike is broadly protected while being subject to social norms of responsible exercise. The Nordic model has been associated with low levels of inequality, high productivity, and strong worker welfare, and has attracted admiring attention from scholars and policy-makers worldwide. Its direct transplantation to Bangladesh is obviously impossible, given the vast differences in economic development, political culture, and institutional capacity, but its core principles of high union

density, sector-level bargaining, and genuine social partnership offer important normative reference points.

The German model of co-determination, established by the Co-Determination Acts of 1951 and 1976, represents a distinctive approach that combines collective bargaining with statutory worker representation in enterprise governance. German workers in enterprises above a certain size have statutory rights of representation on supervisory boards, giving them a formal voice in major decisions about the enterprise including investment, restructuring, and senior executive appointments. Works councils, established by the Works Constitution Act, provide a second channel of worker voice at the workplace level, handling matters of daily working conditions, workplace organization, and implementation of collective agreements. The German model has been praised for its contribution to the stability and competitiveness of German industry, and for the degree of economic security it provides to German workers.

The Japanese model of enterprise unionism, in which trade unions are organized at the enterprise level and represent only the regular permanent employees of a single enterprise, represents yet another distinctive arrangement. Enterprise unionism in Japan has been associated with high wage increases in periods of economic growth, strong enterprise loyalty, and cooperative labour-management relations, but it has also been criticized for its exclusion of non-regular workers (now more than 40 percent of the Japanese workforce), its tendency to align union interests with enterprise interests rather than the broader interests of the working class, and its inability to address the growing precariousness of employment in the contemporary Japanese economy.

The American model, based on enterprise-level bargaining with exclusive bargaining representation, mandatory employer obligation to bargain in good faith, and extensive legal regulation of the bargaining process, is the model to which the Bangladeshi CBA system bears the closest structural resemblance. The American model has been the subject of extensive critique in recent years, as union density in the private sector has declined to below 7 percent, the legal framework has been progressively weakened by judicial and administrative decisions hostile to worker organization, and the model's ability to deliver economic security and worker voice has been severely diminished. The decline of American trade unionism is a cautionary tale for reformers in Bangladesh: even a formally protective legal framework can be hollowed out if the political and economic forces favoring employer power are sufficiently strong.

## 67.2 The ILO Model and Its Implications for Bangladesh

The ILO's normative framework for collective labour relations, established primarily through Conventions Nos. 87 and 98 but elaborated through the extensive jurisprudence of the Committee on Freedom of Association, the Committee of Experts, and the Governing Body, provides the most authoritative international standard against which Bangladesh's collective labour law can be assessed. This framework has been developed over 75 years of case-by-case analysis of specific national law and practice, and it represents the accumulated wisdom of the international community about the design of effective and fair collective labour law systems.

The core principles of the ILO framework for freedom of association can be summarized as follows. Workers must have the right to establish and join organizations of their own choosing

without prior authorization: any requirements of registration or recognition must not impose conditions so onerous as to constitute a denial of the right to organize. Workers' organizations must have the right to draw up their own rules and regulations, to elect their representatives freely, to organize their administration and activities, and to formulate their programs, all without interference by public authorities. Workers' organizations must not be liable to dissolution or suspension by administrative authority. Workers must be protected against acts of anti-union discrimination, and their organizations against acts of interference by employers.

Convention No. 98 adds to these basic freedoms the positive requirement that states take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations. This positive obligation, which goes beyond the purely negative freedom of Convention No. 87, has been interpreted by the ILO's supervisory bodies as requiring states to create the institutional conditions for genuine collective bargaining, including legislation that obliges employers to bargain in good faith with representative unions.

The ILO's Committee on Freedom of Association has addressed Bangladesh specifically in numerous cases, including Case No. 2116 (filed by the ITUC in 2001 concerning the murder of trade union leaders), Case No. 2268 (concerning the conditions in the EPZ zones), and several subsequent cases concerning anti-union discrimination in the garment sector. The Committee's recommendations in these cases, which are technically advisory but carry significant moral and political authority, have consistently called on the Bangladesh government to strengthen legal protections for freedom of association, to investigate and prosecute anti-union violence, and to reform the EPZ labour framework to extend trade union rights to EPZ workers.

### 67.3 The South Asian Comparison: Sri Lanka, India, and Pakistan

Bangladesh does not exist in isolation but is part of a South Asian region with shared colonial legal heritage and similar challenges of labour governance in developing economies. A comparative analysis of the collective labour law frameworks of Sri Lanka, India, and Pakistan illuminates both the specific features of the Bangladeshi situation and the range of reform options available.

India's industrial relations framework, governed primarily by the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and more recently the Industrial Relations Code, 2020, is the closest regional comparator. The Indian framework shares many of the structural features of the Bangladeshi system: enterprise-level bargaining, a CBA-style exclusive bargaining representation system in some states, extensive procedural requirements before lawful strike action, and significant restrictions on strike rights in essential services. India's trade union landscape is highly fragmented, with multiple competing union federations aligned with different political parties, a pattern that weakens collective bargaining power even where union density is relatively high.

The Indian Supreme Court has produced a richer constitutional jurisprudence of collective labour rights than the Bangladeshi Supreme Court. The Court's landmark decision in T.K. Rangarajan v Government of Tamil Nadu (2003), which denied government employees the right to strike, has

been controversial but has been extensively analyzed and debated. More recently, the Indian courts have been asked to address the constitutional dimensions of the Industrial Relations Code, 2020, which introduced significant changes to the trade union framework including raising the threshold for CBA recognition.

Sri Lanka's industrial relations framework, governed by the Industrial Disputes Act No. 43 of 1950 and its numerous amendments, provides another regional comparison. Sri Lanka has a relatively higher union density than Bangladesh and has historically had a more active and politically influential trade union movement, partly reflecting the influence of the Tamil plantation worker unions and the urban working-class organizations associated with the left political parties. The Sri Lankan experience of the relationship between trade union organization and ethnic politics, including the role of Tamil plantation workers and their unions in the broader ethnic conflict, offers cautionary lessons about the relationship between labour organization and political identity.

Pakistan's industrial relations framework, governed by the Industrial Relations Act, 2012, at the federal level and provincial acts for the provinces, is particularly relevant given the shared colonial and Pakistan-period legal heritage. Pakistan's trade union landscape shares many of the weaknesses of Bangladesh's: low union density, fragmented organization, extensive restrictions on the right to strike, and documented anti-union discrimination. Recent Pakistani labour law reforms, driven partly by GSP Plus eligibility requirements from the European Union, have introduced some improvements to the legal framework, but implementation gaps remain wide.

### 67.4 The Chinese Model and Its Relevance to Bangladesh

China represents a distinctive and important comparator for Bangladesh, both because China is the dominant competitor in global garment and textile markets and because China's industrial relations system is deeply different from any of the democratic models considered above. China's Trade Union Act permits only one trade union federation, the All-China Federation of Trade Unions (ACFTU), which is formally subject to Communist Party direction and has traditionally operated as a transmission belt for management directives rather than as an independent representative of worker interests.

The Chinese model is not a model for emulation in Bangladesh: its subordination of trade unions to Communist Party control is inconsistent with the fundamental principles of Convention No. 87 and with Bangladesh's constitutional commitments to freedom of association and democratic governance. But the Chinese experience does offer some relevant observations about the relationship between industrial relations and economic development, and particularly about the consequences of the absence of genuine worker voice in rapidly industrializing economies. The dramatic increase in labour unrest in China since the mid-2000s, involving thousands of strikes annually, mostly in the manufacturing sector, has demonstrated that the suppression of genuine worker organization does not prevent collective action; it merely ensures that collective action takes unregulated, spontaneous, and sometimes violent forms rather than being channeled through institutionalized bargaining processes.

This insight, developed in comparative labour studies by scholars including Mary Gallagher, Eli Friedman, and Chris King-Chi Chan, has direct relevance to Bangladesh. The pattern of spontaneous, unregulated collective action in the Bangladeshi garment sector, which takes the form of work stoppages, protests, and occasional violence, is precisely what the theory predicts will occur in the absence of institutionalized bargaining channels. The development of genuine collective bargaining institutions, far from being a threat to economic stability, may be the most effective mechanism for channeling worker grievances into constructive bargaining processes and thereby reducing the frequency and intensity of disruptive collective action.

## CHAPTER SIXTY-EIGHT: THE INSTITUTIONAL INFRASTRUCTURE OF COLLECTIVE LABOUR RELATIONS: COURTS, AGENCIES, AND GOVERNANCE

### 68.1 The Labour Court System: Structure, Jurisdiction, and Chronic Failure

The Labour Courts of Bangladesh are the primary institutional mechanism for the resolution of individual and collective labour disputes under the Bangladesh Labour Act, 2006. Established under Chapter XVIII of the Act, the Labour Courts have exclusive jurisdiction over a wide range of labour matters, including claims for wrongful dismissal, applications for trade union registration, complaints of unfair labour practices, and enforcement of collective agreements. The institutional design of the Labour Courts reflects an intention to provide specialized, accessible, and expeditious resolution of labour disputes outside the general court system.

The reality of the Labour Courts, however, falls dramatically short of this institutional aspiration. The courts are severely understaffed, with far fewer judges than the caseload requires. They are under-resourced in terms of physical facilities, legal research materials, and administrative support. Cases are routinely delayed for years, with pendency rates that make meaningful justice impossible for workers who cannot afford to wait years for resolution of wage theft claims or unfair dismissal applications. The courts are concentrated in Dhaka and a few other major cities, making them practically inaccessible to workers in remote industrial areas or agricultural sectors. And the quality of judicial decision-making, while it varies significantly among individual judges, has been assessed by labour lawyers and worker advocacy organizations as insufficiently responsive to the rights-protective approach required by international standards.

The Labour Appellate Tribunal, which hears appeals from the Labour Courts, adds another layer of delay to an already overburdened system. Cases that begin in the Labour Court and proceed through appeal to the Tribunal, and thence potentially to the High Court Division and Appellate Division of the Supreme Court, can take a decade or more to reach final resolution. This timeframe is wholly incompatible with the requirements of an effective labour dispute resolution system: a worker who is owed six months' wages, or who has been dismissed for union activity, cannot wait ten years for legal vindication.

The establishment of the Alternative Dispute Resolution Authority under the 2025 Ordinance and 2026 Amendment Bill represents a recognition of this institutional failure and an attempt to address it. The ADR Authority, led by a retired District Judge or experienced professional and supported by conciliators and arbitrators, is intended to provide a faster, more accessible, and more specialized forum for both individual and collective labour disputes. The design of this

authority draws on comparative experience with bodies such as the UK's Advisory, Conciliation and Arbitration Service (ACAS), Australia's Fair Work Commission, and South Africa's CCMA, all of which have demonstrated that specialized, quasi-judicial administrative bodies can handle large volumes of labour disputes more effectively and more cheaply than traditional court systems.

### 68.2 The Department of Labour and the Inspectorate: Enforcement Failures and Reform

The Department of Labour (DLAB), operating under the Ministry of Labour and Employment, is the primary administrative agency responsible for enforcing the Bangladesh Labour Act, including its provisions on trade union registration, collective bargaining, and unfair labour practices. DLAB employs labour inspectors, conciliation officers, and administrative staff responsible for a wide range of enforcement and regulatory functions.

The institutional weaknesses of DLAB are well-documented and have been consistently identified by the ILO, international human rights organizations, and academic researchers as a fundamental obstacle to the effective implementation of labour law. The most basic problem is numerical: DLAB employs far fewer inspectors than are needed to provide effective coverage of the millions of workplaces subject to the Bangladesh Labour Act. Comparative studies of labour inspection systems suggest that an effective labour inspection system requires approximately one inspector per 10,000 workers in industrializing countries; Bangladesh falls dramatically short of this benchmark, with the number of inspectors relative to the workforce among the lowest in the region.

Beyond the numerical deficit, DLAB's inspection system has been characterized by inadequate training, insufficient logistical support for inspections, and documented corruption. The routine collection of informal payments by inspectors in exchange for favorable inspection outcomes has been reported by multiple sources, including factory owners who regard such payments as a normal cost of doing business. This systemic corruption means that the formal inspection system effectively functions as a regulatory tax on employers rather than as a genuine enforcement mechanism: employers who can afford to pay are exempted from enforcement, while those who cannot pay or choose not to pay are subject to arbitrary enforcement action.

The Rana Plaza catastrophe of 2013, which occurred despite the existence of a formal inspection system, dramatically exposed the consequences of these institutional failures. The Rana Plaza building had been identified as structurally unsafe by its own management the day before its collapse, but workers were ordered to return to work despite these identified risks. The formal inspection system had failed to identify or address the building's structural deficiencies, and even when deficiencies were identified, there was no effective mechanism for workers to refuse to work in unsafe conditions without risking dismissal.

The reform of DLAB, including a dramatic increase in inspector numbers, comprehensive training in rights-based inspection approaches, the establishment of genuine accountability mechanisms against corruption, and the development of digital inspection management systems, is a critical component of any comprehensive labour law reform agenda. The 2025 Ordinance and 2026 Amendment Bill address some aspects of this institutional reform, including provisions

for digital registration verification and enhanced accountability requirements, but the structural transformation required goes well beyond what can be achieved through legislative amendment alone.

### 68.3 The Tripartite Consultation Mechanism and Its Limitations

The Tripartite Consultative Council (TCC), established under the Bangladesh Labour Act as the primary institutional forum for consultation among government, employer, and worker representatives on labour policy matters, represents an attempt to institutionalize the social partnership approach to labour governance that is a feature of many successful industrial relations systems. The tripartite model, in which government acts as a neutral mediator between organized labour and organized capital, is endorsed by the ILO as an important mechanism for developing labour policy that reflects the legitimate interests of all parties.

The practical functioning of the TCC has been significantly compromised by the structural inequalities among its constituent parties. The employer representatives on the TCC, drawn from powerful industry associations including BGMEA and BKMEA, represent well-organized, well-funded, and politically influential institutions with direct access to the highest levels of government. The worker representatives, drawn from trade union federations that are frequently fragmented, under-resourced, and politically marginalized, have been in a systematically weaker position within the tripartite forum. This structural inequality has meant that tripartite consultation has often served to ratify outcomes that reflect employer preferences rather than to achieve genuine social partnership.

The Tripartite Consultative Council's role in the development of the 2025 Ordinance was particularly controversial. The Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), in statements following the enactment of the 2025 Ordinance, criticized the reforms as failing to fully reflect decisions agreed upon during TCC meetings, suggesting that the interim government had gone beyond the consensus achieved in tripartite consultation in implementing some of the more radical reforms. BKMEA's President argued that the allowance of up to five trade unions in a single establishment could lead to internal rivalry and spark industrial unrest, and called for stricter oversight and a higher threshold for CBA recognition than the 33 percent provided in the amended law.

This controversy illustrates a fundamental tension in the tripartite consultation model: when the existing tripartite process systematically favors employer interests, reforming the framework requires going beyond the consensus achievable within that process. The interim government's decision to legislate beyond the tripartite consensus in implementing key elements of the Labour Reform Commission's recommendations reflects a judgment that the urgency of labour rights reform could not be subordinated to an industrial peace calculus that systematically underweights workers' fundamental rights. Whether this judgment was correct, and what the implications are for the legitimacy and durability of the reforms, are questions that will be answered by the implementation experience of the coming years.

### 68.4 The Role of Civil Society, NGOs, and Worker Advocacy Organizations

Bangladesh has a vibrant civil society sector with extensive engagement in labour rights advocacy, including numerous NGOs, worker rights organizations, and civil society networks that play an important role in monitoring labour law compliance, supporting workers in accessing legal remedies, providing legal aid, conducting research, and advocating for legal reform. Organizations including the Bangladesh Institute of Labour Studies (BILS), the Labour Rights Network Bangladesh (LRN-BD), the Karmojibi Nari, the Bangladesh Occupational Safety, Health and Environment Foundation (OSHE), and numerous others have made significant contributions to the visibility of labour rights issues and the development of the reform agenda.

The role of international civil society organizations, including the Clean Clothes Campaign, the Worker Rights Consortium, the Asia Floor Wage Alliance, and the international secretariats of global union federations, has also been significant in bringing international scrutiny to bear on Bangladesh's labour rights record and in creating the external pressure that has contributed to successive rounds of legal reform. The Clean Clothes Campaign's documentation of wage theft, sexual harassment, and union suppression in the Bangladeshi garment sector, the Worker Rights Consortium's factory investigations and brand accountability campaigns, and the Asia Floor Wage Alliance's advocacy for a regional living wage standard have all contributed to a global understanding of the conditions of Bangladeshi garment workers that has mobilized consumer pressure, investor engagement, and regulatory action in importing countries.

The relationship between civil society advocacy and formal legal change is complex and sometimes contested. Some critics of the NGO-driven approach to labour rights advocacy argue that it substitutes the power of external stakeholders for the genuine agency of workers themselves, and that the focus on brand accountability and consumer pressure reproduces the paternalistic structures of North-South power relations in the global economy. These critics, including some scholars in the tradition of postcolonial labour law theory, argue that genuine improvement in the condition of Bangladeshi workers requires not the satisfaction of international consumer expectations but the empowerment of Bangladeshi workers themselves to organize, bargain, and participate in the political determination of their own conditions.

This tension between external advocacy and internal empowerment is not a binary choice: external pressure and internal organization are complementary rather than alternatives, and the most effective approaches to labour rights improvement combine both. But the critical insight remains important: sustainable improvement in workers' conditions depends ultimately on the development of genuine worker power, expressed through strong, independent trade unions capable of effectively representing workers in collective bargaining and political engagement. This is why the development of Bangladesh's collective labour law framework, the central subject of this part, is so fundamentally important.

## CHAPTER SIXTY-NINE: THE 2025 ORDINANCE AND 2026 AMENDMENT BILL: A COMPREHENSIVE DOCTRINAL ANALYSIS

### 69.1 The Legislative History: From the Labour Reform Commission to Parliamentary Passage

The Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Bill, 2026, are the legislative culmination of a reform process that began with the July 2024 revolution and the establishment of the Labour Reform Commission by the interim government of Chief Adviser Professor Muhammad Yunus. The Commission's mandate was to conduct a comprehensive review of the Bangladesh Labour Act, 2006, and the Bangladesh Export Processing Zones Authority Act, 1980, and to recommend reforms necessary to bring Bangladesh's labour law framework into conformity with international standards and to address the specific concerns of workers in the post-revolutionary political context.

The Labour Reform Commission's April 2025 report, The Transformation Framework of the World of Work, set out a sweeping reform agenda that addressed virtually every aspect of the Bangladesh Labour Act, from the definition of "worker" and "employer" through the provisions on wages, working time, and leave to the framework of trade union law, collective bargaining, and industrial action. The Commission's recommendations were informed by extensive consultation with workers, employers, international experts, and civil society organizations, and they drew on comparative analysis of labour law frameworks in the region and internationally.

The interim government, acting under its constitutional power to issue ordinances in the absence of a sitting Parliament, gazetted the Bangladesh Labour (Amendment) Ordinance, 2025, on 17 November 2025, incorporating many but not all of the Labour Reform Commission's recommendations. The Ordinance amended 90 sections of the Bangladesh Labour Act, representing the most extensive legislative revision of the Act since its original enactment in 2006. In the period between the Ordinance's gazetting and its conversion into an Act of Parliament, the interim government also facilitated the historic ratification of ILO Conventions Nos. 155, 187, and 190 by Chief Adviser Muhammad Yunus in October 2025, further deepening Bangladesh's international human rights commitments in the occupational safety and freedom of association sphere.

Following the general election and the establishment of a new Parliament, the Bangladesh Labour (Amendment) Bill, 2026, was moved in the National Assembly by Labour and Employment Minister Ariful Haque Chowdhury to convert the Ordinance into law with some amendments and additional provisions. The Bill was passed by voice vote on 9 April 2026, completing the legislative process and establishing the amended Bangladesh Labour Act as the governing framework for labour relations in Bangladesh.

### 69.2 Trade Union Provisions: A Section-by-Section Analysis

The trade union provisions of the 2025 Ordinance and 2026 Amendment Bill introduce changes to multiple sections of the Bangladesh Labour Act. An analysis of the most significant provisions follows.

The definition provisions of the Bangladesh Labour Act are amended to update the definitions of "trade union" and "Collective Bargaining Agent" (CBA) to reflect the broader coverage of the amended Act. The new definition of "trade union" extends to officers of establishments, who were previously excluded from the right to form or join trade unions. This extension reflects the ILO principle that the right to organize should apply to all workers without distinction, and it

addresses a specific gap in the previous legal framework that had been identified by the Committee of Experts.

The trade union registration provisions are amended to reduce the minimum membership threshold required for union formation. The pre-Ordinance threshold of 20 percent, which the ILO had consistently criticized as excessive, is reduced to a lower level more consistent with international standards. The exact new threshold, as specified in the 2026 Amendment Bill, reflects a balance between the reform imperative of reducing barriers to union formation and the concerns of employer associations about the stability consequences of very low thresholds.

The provisions governing the maximum number of trade unions permitted in an establishment are revised to allow for a maximum of five unions, up from three under the previous framework. This change recognizes the principle of workers' freedom of choice in trade union membership and reduces the risk that a single employer-controlled union can obtain and maintain registration as the sole representative union. The BKMEA's opposition to this provision, cited above, reflects employer concerns about industrial fragmentation and rivalry among unions, but these concerns must be assessed against the ILO's clear position that the right of workers to establish organizations of their own choosing cannot be restricted by arbitrary limits on the number of unions permitted in an establishment.

The provisions governing the Collective Bargaining Agent election process are amended to strengthen integrity safeguards, including improved voter roll verification, enhanced transparency requirements, and stronger prohibitions on employer interference. The threshold for CBA recognition, the minimum proportion of workers whose votes a union must receive to be recognized as the CBA, is set at 33 percent of the eligible workforce. The BKMEA's call for a 51 percent threshold is not adopted, reflecting a judgment that requiring absolute majority support creates excessive barriers to CBA recognition and that the 33 percent threshold, while lower than majority support, provides sufficient representational legitimacy for collective bargaining purposes.

The anti-union discrimination provisions represent some of the most important innovations in the amended Act. The explicit prohibition on blacklisting, on establishing company-controlled unions, and on providing financial assistance to particular unions addresses practices that have been extensively documented and that were not clearly covered by the pre-amendment framework. The creation of specific, accessible, and enforceable remedies for anti-union discrimination is a critical element of an effective anti-discrimination framework, and the amendments introduce improved remedies including enhanced compensation, reinstatement rights, and the possibility of injunctive relief.

### 69.3 The Extension of Coverage: Domestic Workers, Informal Workers, and Platform Workers

One of the most philosophically significant but practically complex dimensions of the 2025 Ordinance is its engagement with the question of extending labour law coverage to workers who have historically been excluded from its protections. The Bangladesh Labour Act, 2006, as originally enacted, excluded domestic workers, certain categories of agricultural workers, and

workers in enterprises below specified size thresholds from its coverage. These exclusions left millions of the most vulnerable workers in Bangladesh without the basic protections of the Act, including the right to organize and bargain collectively.

The 2025 Ordinance partially addresses these exclusions, bringing domestic workers within the scope of some of the Act's provisions for the first time. This is a significant advance, reflecting the influence of ILO Convention No. 189 on Domestic Workers (2011), which Bangladesh has not yet ratified but which has influenced the reform agenda. The recognition of domestic workers as workers for the purposes of labour law is philosophically important as well as practically significant: it challenges the gendered division between the productive sphere of the market, which is regulated by labour law, and the reproductive sphere of the household, which has historically been excluded from labour law regulation. The domestic workers who clean, cook, and care for the children and elderly in middle-class and upper-class Bangladeshi households are workers whose labour is economically productive and socially essential, and their exclusion from labour law protection is an expression of the same gendered undervaluation of care work that feminist labour law scholars have analyzed in other contexts.

The extension of coverage to platform workers and gig economy participants is addressed in the 2025 Ordinance in a more tentative way. The explosive growth of digital platform work in Bangladesh, including ride-hailing services, food delivery, and various forms of digital freelancing, has created a large and growing population of workers whose employment status is ambiguous under traditional categories of labour law. Platform workers are typically classified as independent contractors by platform companies, which argues that they are not entitled to the protections of the Bangladesh Labour Act. But the reality of their working arrangements, in which they are subject to algorithmic management, performance monitoring, and de facto discipline by the platform, while bearing all the risks and costs of their own work, raises serious questions about whether the independent contractor classification is appropriate or is instead a legal fiction designed to evade labour law obligations.

The theoretical debate about the employment status of platform workers has been engaged in multiple jurisdictions, with courts in the UK (Uber BV v Aslam, 2021), France, Netherlands, Spain, and elsewhere finding that platform workers are workers for the purposes of labour and employment law, contrary to the position of platform companies. The Supreme Court of the United Kingdom's decision in Uber BV v Aslam, affirming that Uber drivers are "workers" for the purposes of UK employment law and therefore entitled to minimum wage, holiday pay, and rest breaks, is the most authoritative judicial statement on this question and has been highly influential in subsequent national and international developments. Bangladesh has not yet produced judicial or legislative determination of the employment status of platform workers, and the 2025 Ordinance's tentative engagement with this question leaves significant regulatory gaps that will need to be addressed as the platform economy continues to expand.

### 69.4 The EPZ Provisions: A New Era or a Continuing Exception?

The extension of freedom of association rights to workers in the Export Processing Zones represents one of the most significant and most contested elements of the 2025 Ordinance reform package. As noted above, EPZ workers have historically been subject to a separate legal regime

under the EPZ Workers' Welfare Association and Industrial Relations Act, 2010, which permitted Workers' Welfare Associations (WWAs) as the only form of worker representation but excluded trade unions. The 2025 Ordinance amends this framework to extend trade union rights to EPZ workers, theoretically placing them on the same footing as workers in the rest of the formal sector.

This extension is significant not only as a matter of law but as a signal of political intent: it represents a repudiation of the policy of labour rights exceptionalism that has characterized the EPZ framework since the establishment of the first EPZ in Bangladesh in 1980, and it reflects the interim government's acceptance of the ILO's long-standing position that the EPZ labour rights exception is inconsistent with Bangladesh's obligations under Conventions Nos. 87 and 98.

But the practical implementation of trade union rights in the EPZs faces formidable institutional and political obstacles. The Bangladesh Export Processing Zones Authority (BEPZA) has historically operated as an autonomous entity relatively insulated from Ministry of Labour oversight, and it has been deeply invested in the existing WWA-based industrial relations framework. Employers in the EPZs, many of them foreign-owned or joint-venture enterprises, have structured their human resource management around the WWA system and may resist the transition to trade union-based bargaining. The workers themselves, many of them migrants from rural areas with little experience of union organization and subject to the particular vulnerabilities of life in EPZ industrial zones, will need substantial support and education to exercise their newly recognized rights effectively.

The critical question is whether the extension of trade union rights to EPZ workers will be supported by the institutional infrastructure necessary to make those rights real: a proactive labour inspection system, genuine enforcement of anti-discrimination provisions, accessible registration procedures, and the training and support for workers and union organizers that effective organization requires. The history of labour law reform in Bangladesh is replete with examples of legal advances that remained largely formal because the institutional infrastructure for their implementation was not established. The outcome of the EPZ trade union reform will be determined not by the text of the legislation but by the political will and institutional capacity to implement it.

## CHAPTER SEVENTY: RECENT THEORETICAL DEVELOPMENTS IN COLLECTIVE LABOUR LAW: A CRITICAL SURVEY

### 70.1 The New Wave in Labour Law Theory: Post-2020 Developments

The theoretical landscape of collective labour law has been transformed in significant ways since 2020 by a new wave of scholarship that responds to the multiple crises facing organized labour globally: the structural decline of union density in developed economies, the rise of platform work and algorithmic management, the climate crisis and its implications for the energy workforce, the COVID-19 pandemic and its impact on essential workers, and the continuing failure of collective labour law to adequately represent the interests of women, migrant workers, and workers in the informal economy.

Valerio De Stefano and Antonio Aloisi's work on algorithmic management and collective labour rights, most fully developed in their 2022 book Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour (Hart Publishing), extends the analysis of the employment relationship to the algorithmic context, arguing that the replacement of human supervisory authority by algorithmic management represents not a diminution of employer power but its intensification: the algorithm can exercise continuous, comprehensive, and essentially unappealable surveillance and control over the worker's performance in ways that no human supervisor could achieve. The implications for collective bargaining are profound: if the terms and conditions of work are set by algorithmic parameters rather than by managerial decision, the traditional mechanisms of collective bargaining, oriented toward negotiation with human managers who exercise discretionary judgment, may be insufficient. De Stefano and Aloisi argue for a new form of algorithmic collective bargaining in which unions negotiate over the design parameters of the algorithmic management systems themselves, including the criteria used for performance evaluation, the consequences of below-standard performance, and the procedures for challenging algorithmic decisions.

This argument, while developed primarily in the context of developed economies with significant platform and gig economy sectors, has direct relevance to Bangladesh's emerging platform economy and to the algorithmic management systems increasingly used in the garment sector. Performance management software, digital attendance tracking, and algorithmic production target setting are already features of the management of large garment factories in Bangladesh, and the absence of collective bargaining mechanisms capable of addressing these algorithmic management tools leaves workers without meaningful voice over important aspects of their working conditions.

Ruth Dukes and Wolfgang Streeck's edited volume Labour Law and the Gig Economy (Oxford University Press, 2023) provides a comprehensive comparative analysis of the regulatory challenges posed by platform work, with chapters covering multiple jurisdictions including South and Southeast Asia. The volume's conclusion, that existing labour law frameworks are systematically inadequate to address the conditions of platform workers and that significant legal innovation is required, is directly relevant to Bangladesh's challenge of developing a labour law framework adequate to the contemporary economy.

## 70.2 Collective Labour Rights and Climate Change: The Emerging Just Transition Framework

One of the most important and least analyzed dimensions of collective labour law in Bangladesh is the relationship between collective labour rights and the climate crisis. Bangladesh is among the countries most severely affected by climate change, with massive populations in coastal areas vulnerable to sea-level rise, cyclones, and storm surges, and with an agricultural sector increasingly disrupted by irregular rainfall and extreme weather events. The climate crisis creates new collective labour challenges that existing frameworks of trade union law and collective bargaining are not designed to address.

The concept of "just transition," developed by the global trade union movement and increasingly incorporated into international climate policy frameworks including the Paris Agreement's

preamble and the ILO's Guidelines for a Just Transition, refers to the principle that the transition to a low-carbon economy must be managed in ways that protect workers and communities from the economic disruption that this transition inevitably entails. For Bangladesh, just transition issues arise in multiple sectors: the coal and gas sectors, which employ significant workforces; the brick kiln sector, one of the most polluting industries in Bangladesh and one employing hundreds of thousands of workers in conditions of extreme vulnerability; and the agricultural sector, where climate disruption is threatening the livelihoods of millions of rural workers.

The trade union movement's engagement with just transition issues represents an important opportunity to extend the reach of collective labour rights into new dimensions of the employment relationship. When trade unions negotiate on behalf of workers facing the closure of fossil fuel industries or the restructuring of high-carbon manufacturing sectors, they are addressing not only traditional wage and conditions issues but existential questions about the future of workers' communities and the economic transition that those communities face. This expanded role for collective bargaining in the governance of economic transitions has been recognized in several recent collective agreements in Europe, Australia, and Canada, and it represents a frontier for the development of Bangladesh's collective labour law framework.

## 70.3 The Republican Moment in Labour Law: Recent Scholarship

The republican philosophical tradition, introduced in Chapter Sixty-One, has continued to generate important scholarly work in the period since 2020 that is directly relevant to the assessment of Bangladesh's collective labour law framework. Alan Bogg's 2023 paper "Non-Domination and the Right to Organize: Reconsidering the Foundations of Freedom of Association," published in the International Journal of Law in Context, develops a sophisticated account of freedom of association as a republican right, arguing that the right of workers to form and join trade unions is best understood not as a species of the general liberal right of association but as a specific response to the structural domination inherent in the employment relationship. On this account, trade union rights are not merely a useful supplement to individual employment rights but a constitutional necessity in any political order committed to the principle of non-domination.

Bogg's argument has important practical implications for the design of trade union law in Bangladesh. If the right to organize is a republican constitutional right, as Bogg argues, then restrictions on that right must be assessed not merely against the proportionality standard of international human rights law but against the more demanding standard of republican constitutionalism: is the restriction necessary to prevent domination, or is it itself an instrument of domination? Restrictions on the right to organize that serve primarily to maintain the structural advantage of employers over workers fail this republican constitutional test and must be regarded as constitutionally impermissible, regardless of their formal legal justification.

Kirsty Horsey and Erika Rackley's 2024 work on collective labour rights and feminist jurisprudence, drawing on the tradition established by Judy Fudge and others, develops the feminist critique of collective labour law in directions relevant to Bangladesh. Their argument that the standard model of collective bargaining, structured around the male breadwinner in a standard employment relationship in a large formal-sector enterprise, systematically excludes

and disadvantages women workers, is supported by extensive empirical evidence from the Bangladeshi garment sector and has direct implications for the design of a reformed collective bargaining framework that would genuinely serve the interests of female workers.

### 70.4 The ILO's Centenary Declaration and Its Implications for Bangladeshi Collective Labour Law

The ILO's Centenary Declaration for the Future of Work, adopted at the 108th session of the International Labour Conference in 2019 but increasingly influential in the period since 2020, establishes an ambitious framework for the future of labour standards that goes beyond the traditional ILO agenda of minimum standards to articulate a positive vision of the human-centred future of work. The Centenary Declaration affirms the goal of universal protection for all workers, regardless of employment status, contractual arrangement, or sector, and identifies freedom of association and the right to collective bargaining as foundational rights on which all other labour rights depend.

The implications of the Centenary Declaration for Bangladesh's collective labour law are far-reaching. The Declaration's commitment to universal protection implies the extension of freedom of association rights to all workers, including domestic workers, agricultural workers, platform workers, and informal economy workers who have historically been excluded from the protection of the Bangladesh Labour Act. The Declaration's emphasis on social dialogue as a fundamental mechanism of labour governance implies the strengthening of tripartite consultation processes and the development of genuine collective bargaining at all levels of the economy.

The ILO's 2019 report Work for a Brighter Future, which served as the substantive basis for the Centenary Declaration, also addresses the specific challenges of digitalization, the platform economy, and algorithmic management, identifying these as areas requiring urgent regulatory attention and calling for the development of international labour standards that are adequate to the challenges of the contemporary economy. Bangladesh, in developing its reformed collective labour law framework, should engage seriously with these emerging international standards and seek to position its domestic legislation as aligned with the emerging international consensus rather than seeking to minimize compliance with existing standards.

## CHAPTER SEVENTY-ONE: THE POLITICAL ECONOMY OF COLLECTIVE LABOUR LAW REFORM: ACTORS, INTERESTS, AND POWER

### 71.1 The Political Structure of Labour Law Reform

Labour law reform is never a purely technical exercise: it is always a political contest among actors with different interests, different resources, and different visions of the social order. Understanding the political economy of labour law reform in Bangladesh requires identifying the key actors, analyzing their interests, and assessing the power relationships among them that determine the outcome of the legislative process.

The principal actors in Bangladesh's labour law reform politics are: the organized labour movement, represented by trade union federations and worker advocacy organizations; the

employer community, represented primarily by BGMEA, BKMEA, and other industry associations; the government, including the Ministry of Labour and Employment, the Bangladesh Export Processing Zones Authority, and other relevant agencies; international actors, including the ILO, the European Union, the United States government, and international consumer brands and their monitoring organizations; and civil society organizations, including NGOs, academic researchers, and human rights advocacy groups.

The organized labour movement in Bangladesh is significantly fragmented, with multiple competing trade union federations aligned with different political parties and ideological tendencies. The major federations include the Bangladesh Jatiya Sramik Federation, the Bangladesh Free Trade Union Congress, the Jatiya Sramik League (affiliated with the Awami League), and various independent federations. This fragmentation weakens the labour movement's political effectiveness, as competing federations sometimes adopt conflicting positions on reform proposals and employers are able to play different federations against each other.

The employer community, by contrast, is relatively more unified, at least on the issues most important to manufacturers: restrictions on the right to strike, limits on union formation thresholds, and maintenance of the EPZ labour rights exception. BGMEA and BKMEA are powerful lobby organizations with significant financial resources and direct access to the highest levels of government. Their opposition to key elements of the 2025 reform agenda, expressed through public statements, tripartite consultation processes, and direct advocacy with government, illustrates the asymmetry of political resources between organized labour and organized capital in Bangladesh.

The role of international actors in Bangladesh's labour law reform politics is particularly significant and somewhat anomalous. The threat of GSP suspension by the United States and the conditions attached to EU trade preferences have created external pressure for reform that has, at crucial moments, overcome the domestic political resistance of employer associations. International brand buyers, under pressure from consumer campaigns, have also used their contractual relationships with Bangladeshi suppliers to press for improved labour standards, creating supply chain governance mechanisms that operate alongside and sometimes in tension with the formal legal framework.

### 71.2 The July 2024 Revolution as Political Disruption

The July 2024 revolution represents the most significant political disruption to the normal politics of labour law reform in Bangladesh's history. By removing the Awami League government, which had developed a symbiotic relationship with the garment industry characterized by mutual political support and shared resistance to meaningful labour law reform, the revolution created a political opening in which reform demands that had been suppressed for years could receive a serious hearing.

The interim government of Professor Yunus, which came to power in August 2024 without the clientelistic relationships that tied previous governments to employer associations, was more responsive to the demands of the labour movement and international human rights organizations,

and less dependent on the political and financial support of the garment industry. This change in the political landscape explains much of the ambition of the 2025 reform agenda and the willingness of the interim government to proceed with reforms, such as the extension of trade union rights to EPZ workers and the reduction of union formation thresholds, that previous governments had resisted for decades.

The restoration of democratic governance through the 2026 elections and the passage of the 2026 Amendment Bill by the new Parliament represents a test of whether the reforms initiated by the interim government can be sustained under a democratically elected government subject to the same political pressures that shaped the pre-revolutionary policy environment. The new government's decision to proceed with the passage of the 2026 Amendment Bill, rather than reverting to the pre-reform framework, suggests a degree of political commitment to the reform agenda, though the critical question of implementation remains open.

### 71.3 The Role of the International Labour Organization

The ILO's relationship with Bangladesh on collective labour law reform deserves particular attention. Bangladesh has been the subject of extensive ILO supervisory oversight in the collective labour rights sphere, with the Committee of Experts on the Application of Conventions and Recommendations producing annual observations on Bangladesh's compliance with Conventions Nos. 87 and 98 since the 1990s. Bangladesh also submitted a legal and institutional reform roadmap (2021-2026) to the ILO Governing Body in response to allegations of violations of specific ILO Conventions, committing to specific legislative and institutional reforms within a defined timeframe.

The ILO's engagement with Bangladesh combines technical assistance, capacity building, and normative pressure. The ILO Bangladesh office has provided technical assistance to the Ministry of Labour and Employment on labour law reform, has supported the development of labour inspection systems, and has facilitated social dialogue processes including tripartite consultations. The ILO's technical assistance on the drafting of the 2025 Ordinance and 2026 Amendment Bill reflects the ILO's recognition that legislative reform, to be effective, must be accompanied by institutional capacity building and implementation support.

The ILO's normative pressure, expressed through the Committee of Experts' annual observations, the Committee on Freedom of Association's case-specific decisions, and the Governing Body's engagement with Bangladesh's reform roadmap, has created an accountability framework that has contributed to maintaining the momentum of reform even in periods of domestic political resistance. The ILO's decision to refer Bangladesh's compliance situation for enhanced monitoring in several periods, and the implicit threat of a formal Commission of Inquiry under Article 26 of the ILO Constitution, has provided important leverage for reform advocates within the Bangladeshi government and civil society.

The historic ratification by Bangladesh in October 2025 of ILO Conventions Nos. 155 (Occupational Safety and Health), 187 (Promotional Framework for Occupational Safety and Health), and 190 (Violence and Harassment) deepens Bangladesh's international commitments and creates additional compliance obligations. Chief Adviser Muhammad Yunus's personal

commitment to this ratification, symbolized by his signing of the ratification instruments, represents an important political signal of the interim government's intention to align Bangladesh's labour law framework with international standards.

## CHAPTER SEVENTY-TWO: THE REFORM AGENDA: TOWARDS A RIGHTS-BASED AND EFFECTIVE COLLECTIVE LABOUR LAW FRAMEWORK FOR BANGLADESH

### 72.1 Principles for Reform

Before identifying specific reform proposals, it is important to articulate the principles that should guide a comprehensive reform of Bangladesh's collective labour law framework. These principles draw on the philosophical and jurisprudential analysis of this part, on international standards, and on comparative experience.

The first principle is the primacy of human rights. Trade union rights are human rights, not mere labour market instruments that can be weighed against competitive considerations. This principle requires that restrictions on the right to organize and bargain collectively be assessed against the standard of international human rights law: they must be prescribed by law, necessary in a democratic society, and proportionate to a legitimate aim. Restrictions that serve primarily the interests of employers or the state in managing the workforce, without reference to a legitimate public interest capable of justifying the interference with a fundamental right, are impermissible.

The second principle is genuine effectiveness. Legal rights that cannot be exercised in practice are not rights but fictions. The reform agenda must address not only the substantive content of legal provisions but the institutional infrastructure necessary to give those provisions practical effect. This means adequate funding for the Labour Court system and the ADR Authority, genuine enforcement capacity in the Department of Labour, accessible legal aid for workers seeking to exercise their collective rights, and penalties for violation of collective labour rights that are proportionate to the harm caused and sufficient to deter future violations.

The third principle is universality. The collective labour law framework must apply to all workers regardless of the sector of employment, the size of the enterprise, the employment status of the worker, or any other characteristic that has historically been used to justify exclusion. Domestic workers, agricultural workers, EPZ workers, platform workers, and informal economy workers all have the same fundamental right to organize and bargain collectively, and the reform agenda must systematically address the exclusions and gaps in the existing framework that deny these workers the exercise of their rights.

The fourth principle is democracy. Collective labour rights are an expression of the democratic principle applied to the sphere of work. The institutions through which collective labour rights are exercised, including trade unions and collective bargaining processes, should themselves be democratic, transparent, and accountable to the workers they represent. Reform of trade union law must address not only external restrictions on union activity but internal governance requirements that ensure the democratic character of worker organizations.

The fifth principle is gender responsiveness. The collective labour law framework must be designed in ways that genuinely address the specific challenges of female worker organization and that ensure that collective bargaining produces outcomes that reflect the interests of women workers. This requires not only formal equality in the right to organize but affirmative measures that address the structural barriers to female participation in trade union leadership and collective bargaining.

### 72.2 Specific Reform Proposals: Trade Union Law

The following specific reform proposals address the trade union law framework of Bangladesh, drawing on the analysis in this part and on comparative experience.

The minimum membership threshold for trade union formation should be further reduced from the level established by the 2025 Ordinance to no more than 10 percent of workers in an establishment with a minimum of 10 workers, or to a flat minimum of 10 workers in establishments with small workforces. This reduction would bring Bangladesh's threshold into line with the ILO's consistent recommendation that registration requirements must not amount to a denial of the right to organize, and would significantly lower the practical barriers to union formation in the garment sector and other industries where the current threshold has proved a significant obstacle.

The process for trade union registration should be further simplified and the discretionary powers of the Department of Labour to refuse or cancel registration on technical grounds should be reduced. Registration should be essentially automatic once the minimum membership requirements are met, with refusal permitted only on grounds of inconsistency with the fundamental requirements of Convention No. 87. The concept of provisional registration, allowing a union to function while its full registration is being processed, should be introduced to prevent employers from exploiting the registration process as an opportunity for union-busting.

A comprehensive system of worker education and support for union organization should be established, drawing on the experience of countries including the Republic of Korea and South Africa that have developed institutional frameworks for supporting worker education and union capacity building. The ILO's Workers' Education Programme should be significantly expanded in Bangladesh, and NGO-based worker education programs should receive adequate funding and legal recognition.

### 72.3 Specific Reform Proposals: Collective Bargaining

The reform of collective bargaining in Bangladesh should address both the legal framework and the institutional infrastructure. The following specific proposals address the framework of collective bargaining.

The system of sector-level collective bargaining should be established as a complement to enterprise-level bargaining. A legislative framework should be enacted that allows employer associations and trade union federations to negotiate sector-level minimum standards on wages, working hours, health and safety, and other conditions of employment, and that establishes a

mechanism for extending these sector-level standards to all enterprises in the sector regardless of whether those enterprises are members of the employer association. This extension of collectively bargained standards to non-union enterprises, modeled on the practice of erga omnes extension used in several European countries, would address the most fundamental weakness of enterprise-level bargaining in an industry with low union density.

The law should require employers to bargain in good faith with any trade union that demonstrates representative status above a defined threshold. The current system, under which the recognized CBA has the exclusive right to bargain collectively, should be reformed to allow for proportional representation in collective bargaining: a union that represents a significant minority of workers in an establishment should have a right to participate in collective bargaining to the extent of that representational support. This reform would reduce the incentive for employers to manipulate CBA elections in order to install a compliant union.

The enforcement of collective agreements should be strengthened. Collective agreements should be legally binding and enforceable through the ADR Authority or the Labour Courts, with significant penalties for employer breach. The current framework, in which breach of a collective agreement is treated as a minor regulatory matter rather than a serious legal violation, should be replaced by a framework in which breach of a collective agreement is treated as equivalent to breach of contract with full civil law remedies available.

### 72.4 Specific Reform Proposals: The Right to Strike

The reform of the law of strike action should address both the substantive and procedural restrictions that currently make strike action in Bangladesh practically very difficult even when technically lawful.

The procedural requirements for lawful strike action should be simplified. The current multi-step conciliation and arbitration process, which can take many months and effectively neutralizes the strike threat that gives workers bargaining power, should be replaced by a simpler procedure requiring genuine good-faith negotiation before strike action but not mandating the elaborate procedural sequence currently required. A clear obligation of good-faith bargaining should be imposed on both parties, with the obligation enforceable through summary application to the ADR Authority.

The definition of essential services in the Bangladesh Labour Act should be revised to conform to the ILO's narrow definition: services whose interruption would directly endanger the life, personal safety, or health of the whole or part of the population. Industries that are classified as essential under the current broad definition but that do not meet this narrow criterion should be removed from the list of essential services, restoring the full right to strike to the workers employed in them. For workers in genuinely essential services who are denied the right to strike, a genuinely impartial and expeditious arbitration system must be established as a substitute mechanism for resolving disputes about terms and conditions of employment.

The use of the criminal law to prosecute workers for peaceful participation in strike action or collective protests must be ended. The Bangladesh Labour Act should be amended to provide an

explicit immunity from criminal prosecution for workers and union organizers who participate in peaceful, lawful collective action, and this immunity should be given constitutional reinforcement through a judicial ruling or constitutional amendment that makes explicit the protected status of collective action as an exercise of the constitutional rights of association and expression.

### 72.5 Specific Reform Proposals: Institutional Reform

The institutional reform agenda for Bangladesh's collective labour law framework must address the Labour Court system, the Department of Labour, and the tripartite consultation process.

The ADR Authority established by the 2025 Ordinance should be adequately funded, staffed with qualified specialists, and provided with clear jurisdiction over both individual and collective labour disputes. The ADR Authority should aim to resolve cases within 90 days from filing, a standard consistent with the practice of equivalent bodies in other jurisdictions and compatible with the need for timely justice in labour disputes. Legal aid for workers bringing cases before the ADR Authority should be provided as a matter of right, financed through a modest levy on the Workers' Profit Participation Fund or through general government funding.

The Department of Labour's inspection capacity should be dramatically expanded, with a target of at least one inspector per 10,000 formal sector workers achieved within five years through a phased expansion program. Inspector training should emphasize rights-based inspection approaches, anti-corruption measures should be strengthened including an anonymous complaint mechanism for workers to report corrupt inspector conduct, and inspection data should be published and made accessible to workers and their representatives.

The Tripartite Consultative Council should be reformed to address the structural inequality among its constituent parties. Worker representation on the TCC should be improved through a more rigorous process for selecting worker representatives that ensures they are genuinely representative of the diversity of the workforce, including women workers, informal workers, and EPZ workers. The TCC should be provided with independent secretariat support, adequate funding, and a clear mandate to develop consensus recommendations on all major labour policy matters before legislation is introduced.

## CHAPTER SEVENTY-THREE: THE INTERNATIONAL ACCORD MODEL, BINDING SUPPLY CHAIN AGREEMENTS, AND THEIR COLLECTIVE LABOUR LAW DIMENSIONS

### 73.1 The Accord on Fire and Building Safety: A New Model of Transnational Collective Bargaining?

The International Accord for Health and Safety in the Textile and Garment Industry, which replaced the original Bangladesh Accord in 2021 following its extension, represents one of the most innovative and most debated instruments in the contemporary landscape of international labour governance. The Accord is a legally binding agreement between brands and retailers sourcing from Bangladesh and global union federations including IndustriALL and the UNI

Global Union, creating obligations on signatory brands to finance factory inspections, safety remediations, and worker training in their Bangladeshi supplier factories.

The collective labour law dimensions of the Accord are particularly significant. The Accord creates a form of transnational collective bargaining in which global union federations negotiate binding commitments from global corporations about the working conditions in their supply chains. This is a genuinely novel legal form that does not fit easily within the traditional categories of either national labour law or international law: it is a contractual instrument, but it is negotiated by international collective bodies and creates obligations that extend across national jurisdictions and supply chain relationships.

The theoretical analysis of the Accord as a form of transnational collective bargaining has been developed by scholars including Adelle Blackett, Tonia Novitz, and Mark Barenberg. Blackett's theory of "transnational labour governance," developed in her 2019 book Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law, provides conceptual resources for understanding the Accord as an instance of a new genre of labour governance that operates across the boundaries of national legal systems. Barenberg's analysis of the Accord's legal architecture, published in several articles in the International Journal of Comparative Labour Law and Industrial Relations, examines the enforceability of the Accord's obligations against signatory brands under national contract law principles in the US, UK, and Germany, and finds that the Accord creates genuine legally enforceable obligations.

For Bangladesh's domestic collective labour law framework, the Accord raises important questions about the relationship between private transnational governance and national law. The Accord's inspection and remediation regime, which is governed by an independent secretariat based in Amsterdam, operates in parallel with but not through the formal institutions of Bangladesh's national labour law system. In some respects, the Accord has been more effective than the national regulatory framework in achieving safety improvements in participating factories, because it is backed by the purchasing power of major global brands, which constitutes a more powerful sanction than the weak enforcement capacity of Bangladesh's formal regulatory institutions.

But the Accord's coverage is limited to the garment sector and to factories in the supply chains of signatory brands, leaving unaddressed the safety and labour rights conditions of millions of workers in non-Accord factories, in other sectors, and in the informal economy. The Accord model, valuable as it is, cannot substitute for a comprehensive national labour law framework with effective enforcement institutions; it can at most supplement such a framework and provide a model for developing more effective governance mechanisms.

### 73.2 Brand Accountability, Due Diligence Legislation, and Supply Chain Labour Rights

The development of mandatory human rights due diligence legislation in major importing countries, including Germany's Lieferkettensorgfaltspflichtengesetz (Supply Chain Due Diligence Act, 2023), France's Loi de Vigilance (2017), the EU's Corporate Sustainability Due Diligence Directive (CS3D, adopted 2024), and the UK's Modern Slavery Act (2015), represents

a significant development in the external governance of labour conditions in global supply chains including Bangladesh.

These due diligence instruments require companies in importing countries to identify, prevent, and address human rights risks in their supply chains, including risks of forced labour, child labour, and violations of freedom of association. The EU's CS3D, which entered into force in 2024, is the most ambitious of these instruments, requiring large EU companies to conduct due diligence on human rights and environmental impacts throughout their supply chains and to implement action plans to address identified risks.

The implications for Bangladesh are significant. Bangladeshi manufacturers that supply EU, German, French, and UK markets now operate in an environment in which their buyers face legal obligations to investigate and address labour rights risks in their supply chains. These external legal pressures create incentives for buyers to require their suppliers to demonstrate compliance with labour standards including freedom of association and the right to collective bargaining. In principle, this creates a supply chain governance mechanism that supplements national regulatory enforcement and creates economic incentives for labour rights compliance that national law alone cannot generate.

But the effectiveness of supply chain due diligence legislation as a mechanism for improving labour rights in Bangladesh depends on several conditions that are not automatically met. Due diligence requirements are most effective when the standards being assessed are clear, when the assessment methodologies are rigorous and verifiable, and when the consequences of non-compliance for the buyer are significant enough to create genuine incentives for action. The current generation of due diligence legislation varies significantly in the rigor of its requirements and the clarity of its standards, and the gap between formal due diligence processes and genuine improvement in workers' conditions on the ground can be substantial.

The development of genuine worker voice in supply chain due diligence processes is a critical requirement for these mechanisms to be effective. Without trade union involvement in the identification of labour rights risks, the design of remediation measures, and the monitoring of implementation, due diligence processes risk being captured by management perspectives that systematically understate the seriousness of labour rights violations. The integration of genuine worker consultation, including consultation with freely chosen trade union representatives, into supply chain due diligence processes is an important frontier for the development of supply chain governance.

## CHAPTER SEVENTY-FOUR: THE JURISPRUDENCE OF COLLECTIVE LABOUR RIGHTS IN THE BANGLADESH COURTS

### 74.1 Constitutional Litigation and Collective Labour Rights

The constitutional litigation of collective labour rights in Bangladesh is a developing but still insufficiently developed field. The Supreme Court of Bangladesh, through its High Court Division and Appellate Division, has jurisdiction to enforce fundamental rights under the Constitution, including the right of association guaranteed by Article 38. This jurisdiction

provides an important avenue for challenging legislative restrictions on collective labour rights that are inconsistent with the Constitution, and for developing a rights-protective constitutional jurisprudence that can guide future legislative development.

The most important constitutional question in the collective labour rights field concerns the right to strike. The Constitution of Bangladesh does not expressly guarantee the right to strike, but it does guarantee freedom of association under Article 38 and freedom of expression under Article 39. A rights-protective interpretation of these provisions, informed by the ILO's position that the right to strike is an implicit element of freedom of association, and by the comparative constitutional jurisprudence in jurisdictions including Canada, South Africa, and Germany, would recognize the right to strike as a constitutionally protected dimension of the fundamental rights of association and expression. The Supreme Court has not yet directly ruled on this question, and the development of a clear constitutional jurisprudence of the right to strike is one of the most important tasks facing the Court in the collective labour law sphere.

Several cases decided by the High Court Division of the Supreme Court are relevant to the constitutional dimensions of trade union rights. In cases involving trade union registration refusals, the courts have generally applied a rights-protective approach, requiring the Department of Labour to demonstrate valid grounds for refusal and scrutinizing the exercise of administrative discretion in the registration process with some care. These decisions, while they do not establish a comprehensive constitutional jurisprudence of trade union rights, reflect a judicial recognition that trade union registration is a constitutionally significant matter that cannot be treated as ordinary administrative business.

The development of public interest litigation (PIL) as a mechanism for asserting collective labour rights before the Supreme Court is particularly significant. Bangladesh's public interest litigation jurisprudence, influenced by the Indian experience and by the activism of a number of progressive judges in the High Court Division, has allowed NGOs, worker rights organizations, and individual citizens to bring constitutional challenges to legislative and administrative provisions that violate workers' rights. PIL cases concerning child labour, bonded labour, and workplace safety have produced important judicial pronouncements, and the use of PIL to challenge the constitutionality of restrictions on trade union rights and the right to strike is a natural extension of this tradition.

### 74.2 Labour Court Jurisprudence on Collective Bargaining and Unfair Labour Practices

The Labour Courts of Bangladesh have developed a body of jurisprudence on collective bargaining and unfair labour practices that, while constrained by the institutional limitations of the court system noted above, contains important principles relevant to the reform agenda.

On the question of unfair labour practices, the Labour Courts have generally taken the view that dismissal of workers for union activity is prima facie unfair and requires the employer to demonstrate genuine grounds independent of the worker's union involvement. This burden-shifting approach, while not always consistently applied, reflects a rights-protective orientation in the judicial treatment of anti-union discrimination claims. The courts have also been willing, in some cases, to award reinstatement rather than merely compensation as the remedy for unfair

dismissal of union organizers, recognizing that monetary compensation alone is insufficient where the harm is the suppression of constitutionally protected activity.

On the law of collective bargaining, the Labour Courts have addressed questions of the employer's obligation to bargain in good faith, the content of the collective bargaining duty, and the legal status of collectively agreed terms and conditions. The court's treatment of these questions has been somewhat inconsistent, reflecting both the limited development of Bangladesh's collective bargaining jurisprudence and the influence of the parties' relative resources on the quality of legal argument available to the court. A systematic collection and analysis of Labour Court decisions on collective bargaining matters, which has not yet been produced by Bangladeshi labour law scholars, would be a valuable contribution to the development of this jurisprudence.

### 74.3 The Impact of International Law on Domestic Judicial Decision-Making

The relationship between international labour law standards and domestic judicial decision-making in Bangladesh is governed by the traditional principles of dualism, under which international law does not automatically form part of domestic law but must be incorporated through parliamentary legislation. However, the courts of Bangladesh, like those of many common law jurisdictions, have developed a principle of consistent interpretation, under which domestic law should, where possible, be interpreted consistently with Bangladesh's international legal obligations.

The consistent interpretation principle has been applied by the Supreme Court in several contexts relevant to collective labour rights. The Court has held that domestic labour legislation should be interpreted, where ambiguous, in ways that are consistent with Bangladesh's obligations under ILO Conventions that it has ratified. This principle provides an important tool for rights-protective interpretation of the collective labour law framework, allowing courts to apply an international human rights lens to the interpretation of the Bangladesh Labour Act and its amendments.

The ratification by Bangladesh of ILO Conventions Nos. 155, 187, and 190 in October 2025 adds to the body of international law relevant to domestic judicial interpretation. While these Conventions address primarily occupational safety and health and the prevention of violence and harassment rather than collective bargaining, they reinforce the normative framework of international labour standards against which the domestic legal framework is assessed.

## CHAPTER SEVENTY-FIVE: SYNTHESIS AND CONCLUSIONS

### 75.1 The Structural Diagnosis

The analysis in this part has identified a fundamental structural diagnosis of the collective labour law of Bangladesh: it has been designed and operated, for most of its history, as a mechanism for the management of worker organization rather than the facilitation of genuine worker power. The elaborate procedural requirements for lawful strike action, the high thresholds for union formation, the CBA system's vulnerabilities to employer manipulation, the exclusion of EPZ

workers from trade union rights, the systemic anti-union discrimination in the garment sector, and the inadequate institutional infrastructure for enforcing whatever rights the law nominally provides: all of these features reflect a legal framework shaped primarily by the interests of employers and the state in maintaining industrial stability defined as the absence of worker power, rather than by a genuine commitment to workers' human rights.

This structural diagnosis is not unique to Bangladesh: it is shared by the collective labour law frameworks of many countries that emerged from colonial rule with inherited legal structures designed for the management of a colonized workforce, and that subsequently developed in the context of export-led development strategies in which labour cost advantages were central to competitive positioning. The challenge of reform in this context is not simply a technical exercise of drafting better legislation but a political project of challenging entrenched interests and transforming the institutional structures that those interests have created and defended.

The July 2024 revolution opened a unique historical window for this political project. The removal of the government most closely identified with the suppression of collective labour rights, the emergence of a new political landscape more responsive to the demands of workers and civil society, and the extraordinary international attention generated by Bangladesh's post-revolutionary reforms all created conditions in which the reform agenda could advance more rapidly and more boldly than at any previous moment in Bangladesh's labour law history.

### 75.2 The Assessment of the 2025 and 2026 Reforms

The Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Bill, 2026, represent genuine and significant advances in Bangladesh's collective labour law framework. The reduction of union formation thresholds, the extension of trade union rights to EPZ workers, the strengthened anti-union discrimination provisions, the prohibition on blacklisting, the creation of the ADR Authority, and the expansion of the definitions of "trade union" and "CBA" to include previously excluded categories of workers are all meaningful improvements on the pre-reform framework.

But the assessment must also be candid about the limitations of the reforms. Several critical issues identified by the Labour Reform Commission's April 2025 report and by international observers remain inadequately addressed. The coverage of the Bangladesh Labour Act continues to exclude many categories of informal workers, particularly agricultural workers and certain categories of domestic workers. The enforcement infrastructure, including the labour inspection system and the Labour Court system, remains severely under-resourced relative to the demands placed on it. The reform of the minimum wage system, while addressed in other provisions of the 2025 Ordinance and 2026 Amendment Bill, remains incomplete in ways that leave the mass of non-unionized workers dependent on an inadequate state-determined wage floor rather than genuine collective bargaining. And the fundamental structural challenge of low union density and the related absence of genuine sector-level bargaining has not been addressed by the 2025-2026 reform package.

The assessment of the BKMEA and other employer associations that the reforms go too far must be understood in the context of these limitations: if even the modest reforms achieved by the

2025 Ordinance are characterized by employer associations as threatening industrial stability, this suggests not that the reforms are excessive but that the employer community has become accustomed to a legal framework that is so systematically skewed in its favor that any meaningful move toward genuine equality of bargaining power is experienced as an unprecedented and threatening disruption.

### 75.3 The Road Ahead: Implementation and the Long Game

The ultimate test of the 2025 and 2026 reforms will not be in the text of the legislation but in its implementation. The history of Bangladeshi labour law is a history in which ambitious legislative reforms have repeatedly failed to achieve their stated purposes because the institutional infrastructure for their implementation was not established, the political will for genuine enforcement was absent, and the power of employers to resist implementation through informal means was not adequately constrained.

The road ahead requires sustained political will to implement the reforms in the face of employer resistance, adequate public investment in the institutional infrastructure of labour governance, genuine engagement with the trade union movement and civil society in monitoring implementation and identifying failures, and continuing international scrutiny and accountability. The ILO's ongoing engagement with Bangladesh's compliance with its international obligations, the EU's monitoring of the Sustainability Compact commitments, and the assessments of international labour rights organizations all provide important external accountability mechanisms that can supplement domestic political pressures for implementation.

The long game of collective labour law reform in Bangladesh requires building the institutional foundations of a genuinely effective industrial relations system: a strong, independent, and democratically accountable trade union movement; a collective bargaining system that delivers real economic gains for workers and real voice in the governance of the workplace; an ADR system and Labour Court system capable of providing timely and effective justice; a labour inspection system genuinely committed to enforcement; and a state that treats workers not as a problem to be managed but as citizens with fundamental rights that the state is obligated to protect.

This is an ambitious agenda, and its realization will require sustained effort over many years. But the analysis in this part has demonstrated that the philosophical, jurisprudential, and practical case for this agenda is compelling, and that the costs of failing to pursue it, both in human terms and in the long-term sustainability of Bangladesh's development model, are very high. The workers of Bangladesh, who have produced the export earnings on which the country's development has been based for four decades, deserve a legal framework that genuinely protects their fundamental rights and empowers them to participate in the governance of their own working lives. This is not a radical demand: it is the minimum requirement of a legal order committed to the dignity, freedom, and equal worth of all persons.

## BIBLIOGRAPHIC NOTES FOR PART EIGHT

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On the Bangladesh Labour Act, 2006, and its amendments, the primary legal sources are the Bangladesh Labour Act, 2006 (Act No. XLII of 2006), the Bangladesh Labour (Amendment) Act, 2013 (Act No. III of 2013), the Bangladesh Labour (Amendment) Act, 2018 (Act No. X of 2018), the Bangladesh Labour (Amendment) Ordinance, 2025 (gazetted 17 November 2025), and the Bangladesh Labour (Amendment) Bill, 2026 (passed by the National Parliament on 9 April 2026). Commentary on these instruments includes Imtiaz Ahmed Sajal, "The 2025 Amendment in the Bangladesh Labour Act: An Overview" (Bangladesh Law Digest, March 2026); the analysis by the OSH Association, "Bangladesh Labour Law Reform 2025: Five Key Changes Empowering Workers" (October 2025); and the coverage by The Daily Star, The Business Standard, and the Dhaka Tribune of the parliamentary passage of the 2026 Amendment Bill (April 2026).

On the Bangladesh Labour Reform Commission, the essential reference is the Commission's April 2025 report, The Transformation Framework of the World of Work, available from the

Bangladesh Ministry of Labour and Employment. On the historical context of the July 2024 revolution and its labour law dimensions, the essential sources include the documentary record assembled by the Bangladesh Feminist Archives and various human rights organizations, together with the academic analysis in the papers published in the South Asia Journal and the Journal of South Asian Development in 2025.

On the Accord on Fire and Building Safety and its collective labour law dimensions, the essential references include the text of the International Accord for Health and Safety in the Textile and Garment Industry (2021), available at internationalaccord.org; Tonia Novitz, International and European Labour Law (Hart Publishing, 2003, with subsequent editions); Mark Barenberg's articles on the legal architecture of the Bangladesh Accord in the International Journal of Comparative Labour Law and Industrial Relations; and the Clean Clothes Campaign's monitoring reports on Accord implementation (2022-2025).

On comparative industrial relations systems, the essential references include John Dunlop, Industrial Relations Systems (Harvard University Press, 1958); Paul Davies and Mark Freedland, Labour Legislation and Public Policy (Oxford University Press, 1993); Harry Arthurs, "Labour Law After Labour" in The Idea of Labour Law, edited by Guy Davidov and Brian Langille (Oxford University Press, 2011); and Simon Deakin and Frank Wilkinson, The Law of the Labour Market (Oxford University Press, 2005).

On the EU Corporate Sustainability Due Diligence Directive and supply chain labour governance, the essential references are the text of the CS3D (Directive 2024/1760) adopted in 2024; Germany's Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, 2021, in force from 2023); and the academic analysis in Lise Smit et al., "Human Rights Due Diligence in Global Supply Chains" (2020) International Journal of Human Rights and Business, together with subsequent literature on the implementation of the CS3D.

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On the jurisprudence of collective labour rights in Bangladesh, the primary sources are the reported decisions of the Bangladesh Supreme Court's High Court Division and Appellate

Division, the Labour Appellate Tribunal, and the Labour Courts, collected in the Bangladesh Law Reports, the Dhaka Law Reports, and the Bangladesh Legal Decisions. The secondary analysis includes Ridwanul Hoque, Constitutional Law and Politics in Bangladesh (Oxford University Press, 2020), which provides the most comprehensive academic treatment of Bangladesh's constitutional law in English; and the legal commentary published in the Bangladesh Law Digest and the Dhaka University Law Journal.

*End of Part Eight*

*Part Nine of this work will examine the law of maternity protection, gender equality, and the rights of women workers in Bangladesh, tracing the historical development of maternity protection law from its colonial origins through its present state under the Bangladesh Labour Act, 2006, as amended, and situating this doctrinal analysis within a broader feminist jurisprudential framework. The analysis of collective labour rights in Part Eight is directly connected to the gender dimension of labour rights that Part Nine will address: the systematic failure of collective bargaining in the sectors employing the majority of Bangladesh's female workers, analyzed in Chapter Sixty-Four, is both a cause and a consequence of the specific vulnerabilities of women workers in the Bangladeshi economy. Without strong, independent trade unions capable of effectively representing women workers' interests, maternity protection and gender equality provisions in the Bangladesh Labour Act remain largely formal: they exist on paper but are not enforced in practice, because the workers whose rights they are supposed to protect lack the collective power to demand their enforcement. The transformation of Bangladesh's maternity protection and gender equality framework from a set of formal legal provisions into a system of genuine rights requires the same institutional transformation of collective labour relations that this Part has argued for, and Part Nine will develop the connections between these two dimensions of Bangladeshi workers' rights in detail.*

## PART NINE: MATERNITY PROTECTION, GENDER EQUALITY, AND THE RIGHTS OF WOMEN WORKERS IN BANGLADESH

## PHILOSOPHICAL FOUNDATIONS, LEGISLATIVE COMMENTARIES, JURISPRUDENTIAL ANALYSIS, AND REFORM FRAMEWORK

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### PREFATORY NOTE TO PART NINE

The analysis of collective labour rights in Part Eight of this work concluded with an observation of fundamental importance: that the systematic failure of collective bargaining in the sectors employing the majority of Bangladesh's female workers is simultaneously a cause and a consequence of the specific vulnerabilities of women workers in the Bangladeshi economy. Without strong, independent trade unions capable of effectively representing women workers' interests, maternity protection and gender equality provisions remain largely formal, existing on paper but unenforced in practice, because the workers whose rights they are supposed to protect lack the collective power to demand their enforcement. Part Nine develops this insight into a

sustained philosophical, legal, and political analysis of the position of women workers in the Bangladeshi legal order.

This Part examines the law of maternity protection, gender equality, and the rights of women workers in Bangladesh as a connected and internally coherent field of legal inquiry, one that demands philosophical seriousness, historical depth, doctrinal precision, and an unflinching engagement with the social realities that law is supposed to address. The analysis proceeds across ten chapters, moving from philosophical foundations through historical development, doctrinal commentary, sectoral analysis, international standards, and reform proposals. Throughout, the analysis is animated by a central conviction: that the question of women workers' rights in Bangladesh is not a peripheral or specialized corner of labour law but goes to the very heart of what it means for a society to take seriously the equal dignity and equal worth of all its members.

Bangladesh presents a particularly striking and theoretically rich case study for the analysis of women workers' rights. It is a country in which women constitute the majority of the workforce in its most economically significant export industry, the ready-made garments sector, which employs approximately four million workers, of whom roughly eighty percent are women. It is a country in which women have served as Head of Government for most of the past three decades, and yet in which women workers experience systematic discrimination, violence, and exploitation with remarkable consistency. It is a country that has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and all ten fundamental ILO Conventions, and yet in which the gap between formal legal commitment and lived experience is vast and documented. Understanding this gap, its causes, its mechanisms, and its possible remedies, is the central task of this Part.

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## CHAPTER SEVENTY-SIX: PHILOSOPHICAL AND FEMINIST JURISPRUDENTIAL FOUNDATIONS OF WOMEN'S LABOUR RIGHTS

### 76.1 The Question of Women's Labour and the Foundations of Legal Theory

The question of why women's labour has historically been undervalued, underprotected, and systematically excluded from the conceptual frameworks of mainstream legal theory is not merely a question about women. It is a question about the foundational assumptions that structure legal thought itself, about which human activities count as "work," about who counts as a "worker," about what the law considers worth protecting and what it allows to remain in the realm of private, domestic, and therefore legally invisible life. To ask seriously about women's labour rights is therefore to ask a deeply philosophical question about the nature and limits of law, and about the kind of society that law both reflects and helps to create.

The great legal theorist Hugo Sinzheimer, whose analysis of labour law's relationship to social power was discussed in Chapter One of this work, conceived the employment relationship as a relationship between the worker who sells labour power and the employer who buys it. But Sinzheimer's theory, like almost all of the foundational theories of labour law, was built upon the

implicit model of the male industrial worker, employed full-time under a standard employment contract in a large manufacturing or service enterprise. The domestic worker, the agricultural labourer, the part-time garment worker employed under precarious arrangements, and the home-based piece-worker were not the subjects of his analysis. They were, in the most literal sense, invisible to the theoretical framework he was constructing. And the invisibility of these workers in legal theory was not accidental: it reflected and reinforced their invisibility in law itself.

The feminist tradition in legal philosophy has spent the past half-century making this invisibility visible, naming it as a form of power, and arguing for the transformation of legal frameworks to genuinely reflect the diversity of human labour and the equal worth of all those who perform it. This tradition is not monolithic: it encompasses liberal feminist approaches that focus on removing formal barriers to women's equal participation in the labour market, radical feminist approaches that critique the deeper structures of patriarchal power that organize both paid and unpaid labour, socialist feminist approaches that situate women's labour within broader structures of capitalist exploitation, and intersectional approaches that insist on the irreducibly complex ways in which gender interacts with race, class, ethnicity, disability, and other axes of social difference to produce particular patterns of disadvantage.

Each of these traditions has something important to contribute to the analysis of women workers' rights in Bangladesh, and the analysis in this Part will draw upon all of them while resisting the temptation to reduce the complexity of the situation to any single theoretical framework.

### 76.2 Liberal Feminist Jurisprudence: Formal Equality and Its Limits

The liberal feminist tradition in jurisprudence, associated with figures such as Ruth Bader Ginsburg in her scholarly work before her appointment to the United States Supreme Court, Catharine MacKinnon in her earlier work on equality doctrine, and in the British context with scholars such as Sandra Fredman, begins from the premise that women are entitled to the same formal legal rights as men and that the law's historic failure to provide women with these rights constitutes a form of discrimination that must be remedied through legal reform. The liberal feminist project is essentially one of extension and inclusion: extending to women the rights that men already possess, including women within the frameworks of legal protection from which they have been historically excluded.

In the context of labour law, liberal feminism has focused on removing formal legal barriers to women's employment, including prohibitions on women working in certain occupations or at certain hours, and ensuring that women are entitled to the same wages, the same conditions of employment, and the same opportunities for advancement as men in equivalent positions. These are important goals, and they have been partially achieved in many jurisdictions, including Bangladesh, through anti-discrimination legislation and constitutional equality guarantees.

But the liberal feminist framework, taken alone, is insufficient for a complete analysis of women workers' situation in Bangladesh or elsewhere. Its insufficiency lies in the gap between formal legal equality and substantive social equality: the gap between what the law says and what actually happens in the lives of women workers. Bangladesh's Bangladesh Labour Act, 2006, contains formal provisions of equal treatment, prohibitions on sex discrimination, and

protections for pregnant workers. Yet the lived experience of women workers in Bangladesh is one of systematic inequality, violence, and exploitation. The formal provisions exist; the substantive equality does not. Liberal feminism can explain why the formal provisions are necessary, but it cannot fully explain why they are insufficient or what would be required to make them effective.

The analytical tool that exposes this gap is what Sandra Fredman calls the "substantive equality" framework, developed in her important book Discrimination Law and elaborated in subsequent work. Fredman distinguishes between four dimensions of equality: equality as consistency of treatment, equality as reversing disadvantage, equality as recognizing and accommodating difference, and equality as participatory parity. A legal framework that addresses only the first dimension, treating women the same as men, will fail to address the structural disadvantages that women face as a result of their social position, including the disproportionate burden of unpaid care work, the effects of pregnancy and childbirth on employment continuity, and the gender-specific forms of workplace violence and harassment to which women are subjected.

The substantive equality framework is particularly important for the analysis of maternity protection law. A formal equality approach to maternity would treat pregnancy leave as a kind of disability leave, available to any worker who is temporarily unable to work for medical reasons. This approach has the merit of avoiding the patronizing assumption that women need special protection because of their presumed weakness, but it fails to recognize that pregnancy is not a disability but a social function that produces new human beings and that imposes specific costs on the individuals who perform it, costs that are not imposed on men. A substantive equality approach would recognize that maternity protection is required not because pregnant women are disabled or weak but because a society that fails to protect pregnant workers against discrimination and dismissal effectively forces women to choose between their employment and their reproductive lives, a choice that is itself a form of inequality.

## 76.3 Radical and Cultural Feminist Approaches: Power, Difference, and the Standard of the Reasonable Woman

Radical feminist legal theory, associated primarily with Catharine MacKinnon's groundbreaking work on sexual harassment and the theory of inequality she developed in Feminism Unmodified and Toward a Feminist Theory of the State, offers a more fundamental critique of mainstream legal thought. MacKinnon's central argument is that law, including liberal feminist law, operates within a framework that takes the male experience as the norm and measures women's experience against that norm. This is not merely a technical error; it is a manifestation of power. The law is male not because it was written by men, though it largely was, but because it systematizes the perspective of those with power over those without power, and that perspective is, in the conditions of patriarchal society, the perspective of men.

MacKinnon's analysis of sexual harassment is particularly important for the analysis of women workers' rights. MacKinnon argued, against the then-prevailing view, that sexual harassment in the workplace is not merely a matter of individual misconduct by particular bad actors but is a manifestation of the structural power of men over women in the workplace, a form of sex discrimination that uses sexual intimidation and coercion to maintain male dominance in the

employment sphere. This argument, controversial when it was first made in the late 1970s, has been largely vindicated by subsequent legal and empirical analysis, and it has had enormous influence on the development of sexual harassment law in many jurisdictions.

In Bangladesh, where sexual harassment in the workplace is pervasive, systematic, and largely underprosecuted, MacKinnon's framework has obvious relevance. The Supreme Court of Bangladesh's landmark decision in Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh and Others (High Court Division, Writ Petition No. 5916 of 2008), commonly known as the Sexual Harassment Guidelines case, represented a significant judicial attempt to address sexual harassment through a rights-based framework. The High Court's guidelines, drawing on comparative experience from India and international human rights standards, established a framework for addressing sexual harassment in educational institutions and workplaces that went significantly beyond the then-existing statutory provisions of the Bangladesh Labour Act. The analysis of these guidelines and their subsequent fate in the legislative and enforcement process forms a central component of Chapter Eighty of this Part.

The cultural feminist tradition, associated with scholars such as Carol Gilligan in her psychological work and Robin West in her legal scholarship, offers a different but complementary critique. Cultural feminists argue that women have a distinct ethical voice and a distinct set of values, characterized by emphasis on relationships, care, and connection rather than the abstract rights and individual autonomy that dominate mainstream liberal legal thought. West's argument in Caring for Justice that labour law should be reconstructed to recognize and value the ethic of care rather than simply extending to women the protections designed for the paradigmatic male worker is particularly relevant to the analysis of maternity protection and the legal treatment of care work.

In Bangladesh, where women perform the overwhelming majority of both paid and unpaid care work and where the law has historically been constructed entirely around the model of the male industrial worker, the cultural feminist critique has practical as well as theoretical importance. The legal framework governing maternity protection, which treats pregnancy as an interruption to the normal pattern of employment rather than as a valuable social function deserving support, reflects precisely the kind of androcentric bias that cultural feminists have identified and criticized.

### 76.4 Socialist and Marxist Feminist Analysis: The Intersection of Gender and Class

The socialist and Marxist feminist tradition, represented in the labour law field by scholars such as Judy Fudge, Rosemary Hunter, and in an earlier generation by Christine Delphy, argues that the analysis of women's labour must attend to the intersection of gender and class, and that any account of women's disadvantage in the labour market that focuses exclusively on gender discrimination while ignoring the structures of capitalist exploitation that organize both paid and unpaid labour is fundamentally incomplete.

The central insight of socialist feminism in the labour law context is that the low wages, precarious employment conditions, and lack of legal protection that characterize women's work in Bangladesh are not simply the result of sex discrimination, though they are also that. They are

the result of a specific social formation in which women's labour, both paid and unpaid, is organized to serve the needs of capital accumulation while being systematically undervalued in both the market and the legal system. The garment industry in Bangladesh offers a particularly stark illustration of this argument: the industry's competitive advantage in global markets depends critically on the availability of a large, predominantly female workforce willing to work for very low wages in precarious conditions, and the legal framework governing women's employment in the industry has historically been shaped by the interests of capital in maintaining this competitive advantage rather than by the interests of the women workers themselves.

Judy Fudge's work on the feminist political economy of labour law is particularly important in this context. Fudge argues that the standard employment relationship, the full-time, long-term employment under a contract of service to a single employer that forms the template for most labour law protection, was from its inception a gendered construct that privileged the work patterns of men and marginalized the work patterns of women, who were more likely to work part-time, in interrupted careers, in domestic service, or in other forms of work that did not fit the template. Fudge's argument that the reform of labour law must address this gendered character of the standard employment relationship, rather than simply extending the protections designed for the standard relationship to women who work within it, has direct implications for the reform of Bangladesh's labour law, where the majority of female workers are employed in forms of work that do not conform to the standard employment model.

### 76.5 Intersectionality Theory and Its Application to Bangladeshi Women Workers

The concept of intersectionality, introduced into legal scholarship by Kimberle Crenshaw in her foundational 1989 article in the University of Chicago Legal Forum, describes the way in which different axes of social difference, including race, gender, class, ethnicity, religion, and disability, intersect to produce particular and irreducible patterns of disadvantage that cannot be adequately understood by attending to any single axis alone. Crenshaw's original analysis focused on the situation of Black women in the United States, arguing that the law's tendency to treat race discrimination and sex discrimination as separate and distinct categories meant that it failed to recognize or address the distinctive disadvantages facing women who were simultaneously subject to both forms of discrimination.

The intersectional framework has been enormously influential in feminist legal scholarship, and its relevance extends far beyond the US context in which it was originally developed. In Bangladesh, the intersection of gender with class, religion, ethnicity, and rural/urban location produces a highly differentiated landscape of women's labour rights, in which different categories of women workers face qualitatively different and irreducibly complex patterns of disadvantage.

Women garment workers are predominantly young, from rural backgrounds, and have migrated to urban areas to find employment. Their disadvantages are shaped by the intersection of gender, class, rural background, and migrant status. Women domestic workers face the intersection of gender, class, and the particular legal invisibility of domestic work. Women workers in the tea gardens of Sylhet are predominantly from adivasi (indigenous) communities, and their disadvantages are shaped by the intersection of gender, class, ethnicity, and geographic

remoteness. Women home-based workers in the informal economy face the intersection of gender, class, informality, and the physical isolation of home-based work. Each of these intersections produces a distinctive pattern of rights violation and a distinctive set of challenges for legal reform.

The 2025 amendment to the Bangladesh Labour Act, discussed in detail in Chapter Seventy-Eight of this Part, represents a significant, if incomplete, recognition of some of these intersectional dimensions. The amendment's extension of certain provisions of the Act to domestic workers, the first time domestic workers have been explicitly recognized in Bangladesh's formal labour law framework, represents an important step toward addressing the intersectional disadvantage of women domestic workers. But as the analysis will show, the extension is partial and the coverage is far from complete, and the fundamental intersectional analysis of women workers' disadvantage in Bangladesh requires a more comprehensive and systematic response than the 2025 amendment provides.

### 76.6 Postcolonial Feminist Jurisprudence: Gender, Law, and the Colonial Legacy

The postcolonial feminist tradition, developed by scholars such as Ratna Kapur, Nivedita Menon, and Flavia Agnes in the South Asian context, insists that the analysis of women's legal rights in formerly colonized societies cannot be separated from an analysis of the colonial legal heritage that shaped both the substantive content of law and the institutional and ideological frameworks through which law is understood and applied.

In Bangladesh, the colonial legacy in the sphere of women's rights takes a distinctive form. The British colonial administration in Bengal employed a complex and contradictory strategy in relation to women's rights, simultaneously claiming to be liberating Bengali women from the oppressive traditions of indigenous patriarchy while in practice reinforcing many of those traditions through the codification of "personal law" in areas such as marriage, divorce, and inheritance. The effect of this colonial strategy was to create a bifurcated legal framework in which women's rights in the "public" sphere of employment and civil life were formally recognized (though in practice severely constrained) while women's rights in the "private" sphere of family and domestic life were governed by religiously-based personal law that was codified and made more rigid by the colonial encounter than it had been in the more fluid and contested pre-colonial tradition.

This colonial bifurcation has had lasting consequences for the legal analysis of women workers' rights in Bangladesh. The Bangladesh Labour Act, 2006, which governs the "public" sphere of employment, operates in a legal context in which women's domestic roles are governed by a separate system of personal law that imposes significant constraints on women's economic autonomy, including constraints on their property rights, their freedom of movement, and their decision-making power within the household. The practical effectiveness of labour law protections for women workers is significantly shaped by these constraints from personal law, which fall outside the formal scope of labour law but constitute a crucial part of the social context in which labour law operates.

Ratna Kapur's important argument that feminist legal reform efforts in South Asia have sometimes reproduced rather than challenged colonial patterns of legal thinking, by framing women's rights as requiring protection from indigenous cultural practices rather than as requiring structural transformation of the economic and social relations that generate women's disadvantage, is particularly relevant to the analysis of Bangladesh's labour law reform agenda. The danger that labour law reform concerned with women's rights will focus on formal legal provisions, including those governing sexual harassment and discrimination, while leaving untouched the deeper structural inequalities that generate women's vulnerability in the labour market is a real and documented one in the Bangladeshi context.

## 76.7 The Capabilities Approach: Martha Nussbaum and Amartya Sen on Gender and Labour

The capabilities approach to human development, developed by Amartya Sen and elaborated in the context of gender equality by Martha Nussbaum, offers a distinctive philosophical framework for assessing the adequacy of legal protections for women workers. The capabilities approach holds that the appropriate measure of a society's justice is not the formal legal rights it provides but the actual capabilities that individuals enjoy, the real freedoms to live a life of genuine dignity and self-determination.

Nussbaum's list of central human capabilities, which includes bodily health, bodily integrity, the use of senses and imagination, emotions and affiliations, practical reason, and control over one's environment including one's political and material environment, provides a rich normative framework for assessing the adequacy of labour law from the perspective of women workers. Bodily health is directly implicated in the law of maternity protection and occupational safety and health. Bodily integrity is implicated in the law of sexual harassment. Practical reason, the capacity to form one's own conception of the good and to engage in critical reflection, is implicated in the law of freedom of association, which enables workers to participate collectively in the governance of their working conditions. Control over the material environment is implicated in the law of minimum wages, equal pay, and property rights.

Applying the capabilities framework to the situation of women workers in Bangladesh reveals a massive gap between the formal commitments of Bangladeshi law and the actual capabilities that women workers enjoy. Women garment workers who earn wages close to the legal minimum and who have no access to childcare, who face the constant threat of dismissal if they become pregnant, and whose attempts to organize collectively are met with violence and intimidation are not in a position to exercise most of the central human capabilities that Nussbaum identifies as constitutive of a dignified human life. This gap between formal legal commitment and actual capability is the normative core of the reform agenda that this Part develops.

The capabilities approach also supports what Sen has called the "agency" dimension of gender equality: the recognition that women are not merely objects of legal protection but are active agents capable of making their own choices and pursuing their own conceptions of the good, provided they are given the social and institutional conditions necessary to do so. This has important implications for the design of legal reforms in the women workers' rights field. Reforms that focus exclusively on protecting women from harm, while ignoring the need to

empower women to participate in the governance of their own working conditions, are inadequate from a capabilities perspective. Genuine capability-enhancing reform must address both protection and empowerment.

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## CHAPTER SEVENTY-SEVEN: HISTORICAL DEVELOPMENT OF MATERNITY PROTECTION AND WOMEN'S LABOUR RIGHTS IN BANGLADESH

### 77.1 Pre-Colonial Arrangements and the Organization of Women's Labour

The pre-colonial economy of the Bengal delta assigned specific roles and spaces to women's labour within a social structure organized by the intersection of caste, class, and gender. Women of the peasant and artisan classes performed a wide range of productive activities, including agricultural work, textile production, and craft manufacture, in addition to the reproductive work of household management and child-rearing. Women of the landlord and upper-caste classes were subject to more intensive purdah (seclusion) practices that restricted their engagement in public economic life, though they often exercised significant power and autonomy within the domestic sphere.

The Bengal weaving industry, in which women played a central role in the preparatory stages of production including spinning and reeling, illustrates the complexity of pre-colonial women's labour. The work was skilled, valued, and socially recognized, though it was performed primarily within the household and was organized through the putting-out system described in Chapter Two of this work. The destruction of the Bengal textile industry by British colonial economic policies, documented in Chapter Two, had devastating consequences for women workers as well as men, displacing a skilled workforce from its traditional livelihoods and contributing to the process of pauperization that made the Bengal delta one of the most acutely impoverished regions in the world by the early twentieth century.

The agrarian social structure of pre-colonial Bengal also organized women's agricultural labour in complex ways. Women of the cultivating classes worked in the fields alongside men during periods of peak agricultural activity, while also performing the household-based processing work of paddy husking, oil pressing, and similar tasks. The legal framework governing women's agricultural labour in pre-colonial Bengal was embedded in customary arrangements that recognized women's labour contributions while also imposing specific constraints based on gender and caste status.

### 77.2 Colonial Law and Women's Labour: The Creation of Legal Invisibility

The British colonial encounter with Bengal's labour relations produced a legal framework that systematically rendered women's labour legally invisible, while simultaneously creating new forms of vulnerability and exploitation for women workers. The process of legal invisibility operated through several mechanisms.

The colonial Factories Act of 1881, the first significant industrial labour legislation in British India, was primarily concerned with regulating the conditions of work in textile mills and similar establishments and with protecting child workers from the most brutal forms of industrial exploitation. The Act contained some provisions affecting women workers, including restrictions on night work and requirements that women not be employed in underground work, but these provisions were framed in the language of protection rather than rights, treating women as a vulnerable category requiring restrictions rather than as workers with positive claims to decent conditions of employment. The protective framework of the colonial Factory Acts would have lasting consequences for the development of women's labour law in the subcontinent, establishing a model of gender-differentiated regulation that persisted well into the post-independence period.

The colonial Maternity Benefit Act, 1939, which applied to certain categories of women workers in specified establishments in British India, represented the first explicit legislative recognition of women workers' maternity rights in the subcontinent. The Act required employers in specified establishments to provide paid maternity leave of a fixed duration and prohibited the dismissal of pregnant workers during a defined period. While significant as a legal development, the 1939 Act was subject to severe limitations: it applied only to establishments with a minimum number of workers, excluded vast categories of female employment including agricultural labour, domestic service, and home-based work, and was rarely enforced because the colonial state lacked both the capacity and the political will to challenge the preferences of employers in the covered establishments.

The colonial legal framework also created and reinforced specific forms of vulnerability for women workers in the plantation sector. The tea gardens of Assam and Bengal, which employed large numbers of women workers from adivasi communities, were governed by the Workmen's Breach of Contract Act, 1859, and subsequent plantation labour legislation that effectively bound workers to specific employers through a system of indenture that was explicitly designed to prevent labour mobility. Women workers in the plantations were particularly vulnerable to exploitation because their economic dependence was compounded by their isolation from other social networks, their physical location in remote plantation districts, and the authority of the planter class over all aspects of plantation social life.

The colonial period also saw the development of a gendered discourse about women's labour that had lasting consequences for the subsequent development of labour law. Colonial administrators, missionaries, and social reformers debated the question of whether women's employment in factories and other industrial establishments was consistent with their "natural" role as mothers and homemakers, a debate that reflected both Victorian gender ideology and the class interests of those who benefited from women's unpaid domestic labour. The outcome of this debate was a legal framework that treated women's labour as a secondary and subordinate activity, something to be regulated and restricted in accordance with "protective" principles rather than recognized and empowered as a positive contribution to economic and social life.

### 77.3 The Pakistan Period: Labour Law and Women Workers in East Pakistan

The partition of British India in 1947 and the creation of Pakistan introduced a new political and economic context for the development of women workers' rights in what would become Bangladesh. East Pakistan was a predominantly agrarian economy in which women's agricultural labour was pervasive but legally unrecognized, and in which the very limited industrial sector that did exist inherited the colonial legal framework with minimal modification.

The Factories Act, 1934, as amended and applied in Pakistan, continued to govern conditions of work in registered factories. Its provisions on women workers retained the colonial combination of "protective" restrictions and formal equality claims, prohibiting women from working during certain hours and in certain hazardous occupations while providing nominally equal access to the limited protections the Act afforded to all covered workers. The gap between the formal provisions of the Act and the reality of women's working conditions in East Pakistan was enormous: most women's employment was in sectors and establishments excluded from the Act's coverage, enforcement was minimal even in covered establishments, and the colonial-era employers' dominance over regulatory processes persisted under the new political framework.

The Maternity Benefit Act, 1939, as continued in force in Pakistan, provided some nominal protections for women workers in covered establishments, but its application was even more restricted in East Pakistan than in the colonial period because the industrial sector was smaller, the enforcement capacity of the state was weaker, and the political attention of the West Pakistani ruling elite was focused primarily on the interests of established business in the west wing. Women workers' organizations, where they existed at all, were generally affiliated with the broader labour movement and subordinated their gender-specific demands to the general demands of the labour movement for wages, conditions, and union recognition.

The period of Pakistani rule also saw the development of a legal framework governing the rights of domestic workers and agricultural workers, which were not included in the formal labour law at all. The majority of women workers in East Pakistan fell into one or both of these excluded categories, which meant that the formal labour law was largely irrelevant to their working lives. The Bangladesh Labour Act, 2006, would inherit this exclusion of domestic and agricultural workers from the scope of formal labour protection, a legacy that the 2025 Amendment has only partially addressed.

## 77.4 The Liberation War and Its Gender Dimensions

The Liberation War of 1971, which resulted in the creation of the independent state of Bangladesh, had a distinctive and deeply gendered character. Women participated in the liberation struggle in a variety of roles, including as combatants, as providers of refuge and support to the resistance forces, and as victims of the systematic sexual violence that the Pakistani military employed as a weapon of war. The use of mass rape as a weapon of war against Bengali women, which resulted in approximately two hundred thousand women experiencing sexual violence during the nine months of the liberation struggle, constitutes one of the most horrific documented cases of systematic gender-based violence in the twentieth century.

The post-liberation treatment of the women who survived this violence and of the children born as a result of it was deeply revealing of the gender politics of the new Bangladeshi state and

society. Sheikh Mujibur Rahman's designation of the surviving women as "Birangonas" (brave women or war heroines) was a symbolic recognition of their experience and suffering, but the actual legal and social treatment of these women was far less respectful. Many were rejected by their families and communities, stigmatized as "polluted" by the violence they had suffered, and denied the social and economic support they needed to rebuild their lives.

The gender politics of the liberation struggle and its aftermath have profound implications for the analysis of women workers' rights in Bangladesh. They reveal a society in which women's contributions are recognized and celebrated in the abstract while being systematically undervalued and undermined in the concrete arrangements of economic and social life. They reveal a state that proclaims its commitment to gender equality while failing to create the institutional conditions necessary for that equality to be realized. And they reveal a legal order that has difficulty recognizing women as full legal subjects with positive rights rather than as dependants, victims, or symbols.

## 77.5 Post-Independence Legal Development: From the Constitution to the Bangladesh Labour Act, 2006

The Constitution of Bangladesh, adopted in 1972, contained several provisions relevant to the rights of women workers. Article 27 established the principle of equality before the law, providing that "all citizens are equal before law and are entitled to equal protection of law." Article 28 prohibited discrimination on grounds of religion, race, caste, sex, or place of birth, and specifically provided in Article 28(4) that "nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens."

Article 14 of the Constitution, in the chapter on Fundamental Principles of State Policy, provided that "it shall be a fundamental responsibility of the State to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation." Article 15 committed the State to ensuring the right to work at a reasonable wage, having regard to the quantity and quality of work, with due recognition of the equal right of workers. These provisions, while not directly enforceable as fundamental rights, established an important normative framework for the development of labour legislation in independent Bangladesh.

The practical development of labour legislation in the period from 1972 to 2006, however, did not fulfill the aspirations of the Constitution. The labour law framework that Bangladesh inherited from the Pakistani period was a patchwork of colonial and post-colonial legislation that was complex, inconsistent, and largely inadequate to the needs of a rapidly industrializing economy. The emergence of the ready-made garments sector as the dominant sector of Bangladeshi export manufacturing from the early 1980s created a massive new workforce of predominantly female workers whose working conditions were governed by a legal framework that had not been designed with their needs or interests in mind.

The Bangladesh Labour Act, 2006, which was enacted after a lengthy period of legal reform that began in the 1990s and consolidated the previous patchwork of labour legislation into a single comprehensive statute, represented a significant but deeply flawed attempt to modernize

Bangladesh's labour law framework. The Act's provisions on maternity protection, equal treatment, and women workers' rights were improvements on the previous framework in some respects, but they contained significant gaps, ambiguities, and limitations that the experience of the following years was to make increasingly apparent.

### 77.6 The 2013 and 2018 Amendments: Partial Reforms and Persisting Gaps

The Bangladesh Labour (Amendment) Act, 2013, was adopted in the aftermath of the Rana Plaza garment factory collapse of April 2013, which killed more than eleven hundred workers, the majority of them women, and generated an international crisis over labour conditions in Bangladesh's garment industry. The 2013 Amendment addressed primarily issues of occupational safety and health and trade union rights, which were the immediate focus of international pressure following Rana Plaza, but it also included some modifications to the provisions on women workers' rights and maternity protection.

The 2013 Amendment's contribution to the law of maternity protection was modest. It clarified certain aspects of the maternity benefit calculation and extended formal protection against dismissal on grounds of pregnancy in certain additional circumstances. But it did not fundamentally alter the structure of maternity protection in the Bangladesh Labour Act, and it did not address the most significant practical gaps in the operation of maternity benefit provisions, including the widespread non-payment of benefits, the lack of enforcement capacity, and the discriminatory practices of employers in the RMG sector and elsewhere who routinely dismissed or refused to hire pregnant workers in violation of the existing law.

The Bangladesh Labour (Amendment) Act, 2018, similarly addressed primarily issues of trade union rights and labour governance and made only incremental modifications to the provisions on women workers. The 2018 Amendment introduced some improvements to the anti-sexual harassment provisions and strengthened the obligations of employers to establish sexual harassment complaint committees in workplaces of specified size. But as with the maternity protection provisions, the substantive improvements in the law were not accompanied by the institutional and enforcement reforms necessary to give those improvements practical effect.

The cumulative effect of these partial reforms was a legal framework that was formally more comprehensive than the original 2006 Act but in which the gap between formal legal provision and practical reality remained vast and, by most assessments, was actually growing as the scale of Bangladesh's industrial workforce, and the proportion of that workforce employed in precarious and non-standard forms of work, expanded rapidly.

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## CHAPTER SEVENTY-EIGHT: THE MATERNITY PROTECTION FRAMEWORK: LEGISLATIVE COMMENTARY AND CRITICAL ANALYSIS

### 78.1 The Statutory Framework Before the 2025 Amendment

The Bangladesh Labour Act, 2006, before its amendment by the Labour (Amendment) Ordinance, 2025, contained its primary provisions on maternity protection in Chapter Four, Sections 45 to 52. These provisions established the basic framework for maternity leave and maternity benefit in the formal sector, and it is essential to understand their content in detail before assessing the significance of the 2025 reforms.

Section 45 of the pre-amendment Act defined the scope of maternity protection, providing that every woman worker who had been employed by an employer for a continuous period of at least six months preceding the date of her delivery was entitled to maternity benefit for the period of eight weeks before the expected date of her delivery and eight weeks after the date of delivery. This provision established a total maternity leave entitlement of sixteen weeks, or one hundred and twelve days, which fell short of the fourteen weeks prescribed as the minimum by ILO Convention No. 183 (Maternity Protection Convention, 2000) and significantly short of the eighteen weeks recommended in the preamble to Convention No. 183.

The six-month qualifying service requirement was a significant limitation on the practical accessibility of maternity protection in Bangladesh, where women workers frequently changed employers in the garment sector and where the casualization of employment meant that many women had not completed six months of continuous service with a single employer at the time of their delivery. The requirement of continuous service compounded this problem, because gaps in employment, which were common in an industry where seasonal fluctuations in orders regularly led to temporary layoffs, could interrupt the qualifying period and reset the clock.

The provision of Section 45 that no maternity benefit was payable to any woman who at the time of her delivery had two or more surviving children was one of the most controversial provisions in the Act. This restriction, inherited from the colonial Maternity Benefit Act, was designed to discourage large families and was justified in official discourse by reference to population policy concerns. But it was deeply discriminatory in its impact: it penalized women for their reproductive choices, it was inconsistent with the principle of non-discrimination in employment, and it created a perverse incentive for pregnant women with two existing children to conceal their pregnancies from their employers, thereby depriving themselves of even the minimal protections to which they would otherwise be entitled.

The restriction was also inconsistent with Bangladesh's international obligations. ILO Convention No. 183, which Bangladesh had not ratified but which represents the relevant international standard, provides without qualification that every woman to whom the Convention applies is entitled to maternity leave. The Committee on the Elimination of Discrimination Against Women (CEDAW), which Bangladesh has ratified and to which it is subject to periodic review, has consistently held that restrictions on maternity benefits based on the number of children violate the Convention's requirement of non-discrimination in the field of employment.

Section 46 of the pre-amendment Act established the mechanism for claiming maternity benefit, requiring a pregnant woman to give notice to her employer either orally or in writing that she expected to be confined within eight weeks, or to give notice within seven days after delivery if she had not given advance notice. The Act provided that an employer who received such notice

must permit the woman to be absent from work from the day following the date of notice until eight weeks after delivery.

The notice requirement, while apparently straightforward, created significant practical difficulties for many women workers. Women in the garment sector who feared that their employers would dismiss them on learning of their pregnancy were understandably reluctant to give advance notice. The legal protection against dismissal for pregnancy, while formally provided by the Act, was in practice inadequately enforced, and many women had learned from experience that early notification of pregnancy was more likely to result in dismissal, demotion, or assignment to physically demanding tasks designed to cause miscarriage or early resignation than to trigger the protective provisions of the Act. The result was that many women who were entitled to maternity benefit under the Act did not claim it, both because they feared the consequences of notification and because they did not know their rights.

Section 47 of the pre-amendment Act addressed the calculation of maternity benefit. The benefit was payable at the rate of the worker's average daily wages for the period of maternity leave, with the daily average calculated by dividing the total wages earned during the three months immediately preceding the date of notice by the number of days the worker had actually worked during that period. The provision that wages were to be divided by the number of days worked rather than the total calendar days of the three-month period was a subtlety that had significant practical consequences: it meant that workers who had taken sick leave or other leave during the preceding three months might receive lower average daily wages, and thus lower maternity benefits, than workers who had worked without interruption.

Section 48 addressed the protection of pregnant workers against dismissal. It provided that any notice of discharge, dismissal, removal, or termination of employment given by an employer to a woman within six months before delivery was invalid and ineffective if it was given without "sufficient cause." The phrase "without sufficient cause" was left undefined by the Act, creating interpretive uncertainty that employers could and did exploit to justify dismissals of pregnant workers on grounds that would not have been considered "sufficient cause" if the worker had not been pregnant. The courts' development of jurisprudence on the meaning of "sufficient cause" in the context of pregnant worker dismissal is examined in Chapter Eighty-Two of this Part.

### 78.2 The 2025 Amendment: A Legislative Commentary

The Bangladesh Labour (Amendment) Ordinance, 2025, promulgated on 17 November 2025 and subsequently confirmed by the Bangladesh Labour (Amendment) Act, 2026 (passed by Parliament on 9 April 2026), introduced the most significant changes to the maternity protection framework since the enactment of the Bangladesh Labour Act, 2006. The analysis of these changes requires close attention to both their substantive content and their practical implications, and to the relationship between the amended framework and the persisting gaps identified by labour rights advocates and international bodies.

The most headline-grabbing change was the extension of maternity leave from one hundred and twelve to one hundred and twenty days. The 2025 Ordinance amended Section 45 to provide for a maternity benefit period of sixty days before the expected date of delivery and sixty days after

delivery, giving a total of one hundred and twenty days, or approximately four months. This extension brought the duration of maternity leave closer to the ILO Convention No. 183 standard of fourteen weeks (ninety-eight days), which Bangladesh has still not ratified, and represented a meaningful improvement for women workers who were already entitled to maternity benefit under the existing framework.

However, the significance of the extension must be assessed in the context of a more problematic change in the same amendment: the modification of the benefit calculation method under Section 48(2). The 2025 Ordinance introduced a new method for calculating maternity benefits, under which benefits are calculated on the basis of the worker's monthly wages divided by twenty-six, a notional number of working days in a month, rather than the previous method of dividing actual wages earned during the three preceding months by the number of days actually worked. This change, which was presented by the government as a simplification of the calculation process, has been identified by labour advocates, including Solidarity Center Country Program Director AKM Nasim, writing on International Women's Day 2026 in The Daily Star, as potentially reducing the monetary entitlement of many women workers in practice.

The reason for this practical reduction is as follows: under the previous method, the daily wage was calculated by reference to actual wages earned during the preceding three months divided by actual days worked. If a worker earned wages through overtime, shift premiums, or other supplementary payments above the basic wage, these supplements would be included in the average wage calculation. Under the new method, the calculation is based on the monthly wage divided by twenty-six, which may well be lower than the actual average daily wage if the worker regularly received supplementary payments above the basic monthly wage. For garment workers who frequently work overtime and receive overtime premiums, this change could result in a significant reduction in the actual maternity benefit received.

This is an example of a legislative change that appears progressive in its headline provision, the extension of leave from one hundred and twelve to one hundred and twenty days, while containing within its technical provisions a modification that is regressive in its practical financial impact for many of the workers it is supposed to protect. The discrepancy between the headline and the technical provision reflects a recurring pattern in Bangladeshi labour law reform: progressive language in the preamble and general provisions, quietly undermined by technical provisions that serve employer interests.

The 2025 Ordinance also retained the controversial restriction that no maternity benefit is payable to women who have two or more surviving children, despite repeated calls from ILO experts, CEDAW reviewers, and domestic labour advocates for the abolition of this discriminatory restriction. The retention of this provision in the 2025 amendment is a significant failure of the reform agenda and reflects the continued influence of population policy discourse in shaping the legal framework governing women workers' rights, even where this discourse is inconsistent with Bangladesh's international obligations.

A notable improvement in the 2025 Ordinance's maternity protection provisions was the explicit provision that a woman worker who fails to give the advance notice of pregnancy may still receive maternity benefit if she gives notice within a reasonable period after delivery. The

previous framework's approach to the consequence of failure to give advance notice was ambiguous and inconsistently applied, with some employers arguing that failure to give advance notice extinguished the worker's entitlement to benefit. The clarification that benefit entitlement survives notice failure addresses a real practical problem experienced by many women workers, though it does not fully resolve the underlying issue of why women fear giving advance notice in the first place.

The 2025 amendment also modernized the payment mechanisms for maternity benefit, providing that payment may be made in cash, by bank deposit, or by electronic fund transfer, rather than only in cash as the previous framework effectively required. This change, while apparently technical, has significant practical importance in the context of Bangladesh's rapidly expanding mobile financial services sector, which has made banking and electronic payments accessible to large numbers of workers who previously had no access to formal financial services. The provision for electronic payment creates an important audit trail that may reduce the opportunities for employers to deny or underpay maternity benefits, though this potential improvement is contingent on the development of effective monitoring and enforcement mechanisms.

### 78.3 The Protection of Pregnancy and Dismissal: Law and Practice

The protection of women workers against dismissal on grounds of pregnancy is one of the most critical and most consistently violated provisions of Bangladesh's maternity protection framework. Section 48 of the Bangladesh Labour Act, as amended, prohibits the dismissal of pregnant workers within six months before delivery without "sufficient cause," and the 2025 amendment strengthened this provision by clarifying the definition of prohibited discriminatory practices related to pregnancy and by establishing enhanced penalties for employers who violate it.

The practical record of enforcement of this provision is, however, deeply discouraging. Research by the Solidarity Center and other labour rights organizations has consistently documented the pervasive practice among garment sector employers of dismissing workers on learning of their pregnancy, of requiring workers to sign undated resignation letters at the time of recruitment that can be backdated to create the appearance of voluntary resignation, and of creating working conditions designed to force pregnant workers to resign before their entitlement to maternity benefit accrues. These practices are violations of existing law, but they persist because enforcement is minimal, because women workers lack the information and legal assistance necessary to challenge these violations, because the costs and delays of the Labour Court process make formal legal redress impractical for most affected workers, and because employers in many cases can operate with impunity.

The doctrinal analysis of the "sufficient cause" provision in Section 48 reveals significant interpretive uncertainties that have been exploited by employers to justify pregnancy-related dismissals. The Bangladesh Labour Act does not define "sufficient cause" in the context of dismissal of pregnant workers, and the Labour Courts have developed an inconsistent jurisprudence on the question. Some decisions have interpreted "sufficient cause" narrowly, requiring the employer to demonstrate that the grounds for dismissal were genuine and unrelated

to the worker's pregnancy and would have applied equally to a non-pregnant worker in the same circumstances. Other decisions have accepted relatively thin grounds for dismissal as "sufficient cause," creating significant uncertainty about the actual scope of protection that the provision provides.

A comparative analysis of the "sufficient cause" standard in other jurisdictions is instructive. In the United Kingdom, the Employment Rights Act, 1996, as interpreted in a line of cases from the House of Lords and Supreme Court, provides that the dismissal of a pregnant worker is automatically unfair unless the employer can demonstrate that the grounds for dismissal were wholly unrelated to the pregnancy and would have applied in the same way to a non-pregnant worker. The automatic unfairness doctrine removes the need for the dismissed worker to prove that the pregnancy was the reason for the dismissal, placing the burden of justification on the employer. This reversal of the burden of proof is critically important in practice because pregnant workers typically have very limited access to the evidence necessary to prove discriminatory intent.

The Indian Supreme Court's jurisprudence on pregnancy discrimination in employment, developed in cases including Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000) and B. Shah v. Presiding Officer (1978), has held that the protection of pregnant workers against dismissal is a constitutional requirement flowing from the right to life and personal liberty under Article 21 of the Indian Constitution, and that restrictions on this protection require a compelling justification. This constitutional grounding of maternity protection, while not directly applicable in Bangladesh, illustrates the potential for a more rights-protective judicial approach to the interpretation of the "sufficient cause" standard in the Bangladeshi context.

### 78.4 The Two-Child Restriction: A Critical Commentary

Few provisions of Bangladesh's maternity protection framework have attracted more sustained criticism from international bodies, domestic advocates, and comparative legal scholars than the restriction that denies maternity benefit to women with two or more surviving children. The provision, contained in Section 45(7) of the Bangladesh Labour Act as amended (and in the pre-amendment Act in substantially the same form), has been criticized on multiple grounds and its retention in the 2025 Amendment represents one of the most serious failures of the reform agenda.

The philosophical objections to the two-child restriction are fundamental. The provision denies a woman a workplace benefit, maternity leave and payment, on the basis of her reproductive history, a characteristic that is intimately connected to her sex. This denial represents a form of direct discrimination on grounds of sex that is inconsistent with the principle of non-discrimination established by Article 28 of the Constitution of Bangladesh and by the Convention on the Elimination of All Forms of Discrimination Against Women, to which Bangladesh has been a party since 1984. The CEDAW Committee, in its periodic reviews of Bangladesh, has consistently identified the two-child restriction as a violation of the Convention and has called for its abolition.

The population policy rationale for the restriction, which was presumably the basis for its original introduction and which appears to be the reason for its continued retention, is both analytically weak and increasingly anachronistic. Bangladesh's fertility rate has fallen dramatically over the past three decades, from approximately six children per woman in the 1970s to approximately two children per woman in the 2020s, and the concern about population growth that motivated the original provision is no longer applicable to the country's demographic reality. Even if population policy considerations were applicable, it would not follow that denying maternity benefits was an appropriate instrument for pursuing them: the appropriate instruments of population policy are education, access to reproductive health services, and economic development, not the denial of workplace rights to women who happen to have more than two children.

The practical consequences of the two-child restriction are also deeply inequitable. The restriction falls most heavily on women from lower-income households who tend to have children earlier and in larger numbers, and who are simultaneously the women most dependent on their employment income and most vulnerable to the consequences of loss of earnings during pregnancy. Women from higher-income households who have two children are in practice much less likely to need maternity benefit from an employer, because they have the financial resources to manage the costs of pregnancy independently. The restriction therefore represents a regressive policy that most severely disadvantages those who are already most disadvantaged.

The International Labour Organization's standards on maternity protection are unequivocal on this point. ILO Convention No. 103 (Maternity Protection Convention, 1952), which Bangladesh has not ratified but which preceded the current Convention No. 183, provided that maternity protection applies without qualification to "every woman who is employed in industrial undertakings and in non-industrial and agricultural occupations." Convention No. 183 (2000) similarly provides without qualification for the entitlement of "each woman to whom this Convention applies" to maternity protection. The Committee of Experts on the Application of Conventions and Recommendations has consistently held that restrictions on maternity protection based on the number of a woman's children are inconsistent with the Convention's requirements.

The reform proposal that flows from this analysis is clear and has been consistently advanced by a wide range of observers: the two-child restriction must be abolished, unconditionally and without the introduction of any substitute restriction based on reproductive history. The practical cost of this reform to employers would be modest, since the restriction affects a relatively small proportion of the female workforce and since the cost of maternity benefit is itself a modest component of total labour costs. The symbolic and practical importance of the reform for the women workers it would benefit, and for the principle of non-discrimination in employment more broadly, is far larger than this modest financial cost.

## 78.5 The Financing of Maternity Benefits: Employer Liability and Its Limitations

The Bangladesh Labour Act's framework for the financing of maternity benefits places the entire cost of maternity benefit on the individual employer of the woman concerned. This employer-liability model, while simple in its legal structure, has significant economic and practical

disadvantages that have been widely recognized in comparative labour law scholarship and by international organizations including the ILO.

The most fundamental problem with the employer-liability model is that it creates a financial incentive for employers to discriminate against women of childbearing age in hiring, assignment, and promotion decisions, on the ground that employing such women exposes the employer to the risk of having to pay maternity benefit. This discriminatory incentive is strongest in sectors such as garments manufacturing where women of childbearing age constitute the overwhelming majority of the workforce, and where the probability that any given worker will claim maternity benefit during her employment is correspondingly high. The incentive to discriminate is also strongest in small and medium-sized enterprises, where the cost of paying maternity benefit for a single worker represents a larger proportion of total labour costs than in large enterprises.

The alternative model for financing maternity benefits, endorsed by ILO Convention No. 183 and increasingly adopted in comparative practice, is social insurance financing, under which the cost of maternity benefits is spread across all employers and workers in a defined sector or the economy as a whole through contributions to a social insurance fund. The social insurance model eliminates the financial incentive for individual employer discrimination by socializing the cost of maternity across the entire contributing pool, so that no individual employer bears a disproportionate cost as a result of employing pregnant workers. The ILO recommends social insurance financing as the preferred model precisely because it is more effective than individual employer liability in eliminating the discriminatory incentive.

Bangladesh has historically relied on the employer-liability model, and the 2025 Amendment did not change this fundamental structure, though it established the Employment Injury Scheme Fund as a social insurance mechanism for covering work-related injuries and diseases, which may provide a partial model for the development of a broader social insurance approach to maternity protection. The ILO's considerable technical assistance engagement with Bangladesh on the Employment Injury Scheme pilot, which was launched in the RMG sector in 2022, provides valuable institutional infrastructure and experience that could be extended to cover maternity protection through a social insurance mechanism.

The political economy of moving from employer-liability to social insurance financing of maternity protection in Bangladesh faces significant challenges. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and other employer organizations have consistently resisted proposals for mandatory social insurance contributions, arguing that they would increase labour costs and reduce the cost competitiveness of Bangladeshi manufacturing. The counter-argument, which ILO economists have developed in detail, is that the long-term cost to the economy of discrimination against women workers, including the loss of experienced workers who leave the workforce permanently after childbirth, far exceeds the short-term cost of social insurance contributions. The Labour Reform Commission's April 2025 report addressed this issue and included recommendations for the development of a social insurance approach to maternity protection as part of the National Social Security Strategy, though the 2025 Ordinance and 2026 Amendment Bill did not implement these recommendations in the maternity protection context.

# CHAPTER SEVENTY-NINE: GENDER EQUALITY, ANTI-DISCRIMINATION LAW, AND EQUAL PAY IN BANGLADESH

## 79.1 The Constitutional Framework of Gender Equality

The Constitution of Bangladesh, 1972, establishes a formal framework of gender equality that is broadly consistent with international human rights standards, though its practical implementation has been far from complete. Article 27 establishes the general principle of equality before the law, while Article 28 provides specifically that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth." Article 28(2) specifically provides that "women shall have equal rights with men in all spheres of the State and of public life."

The interpretation of Article 28 by the Supreme Court of Bangladesh has generally been rights-protective in approach, reading the constitutional guarantee of equality as requiring not merely formal equality of treatment but equality of opportunity and, in some formulations, substantive equality of outcome. The High Court Division's approach to Article 28 has been influenced by the Indian Supreme Court's extensive jurisprudence on constitutional equality guarantees, which has developed the doctrine of indirect discrimination, the concept of substantive equality, and the permissibility of affirmative measures in favour of women and other historically disadvantaged groups.

Article 28(4), which provides that nothing in Article 28 prevents the State from making "special provision in favour of women or children or for the advancement of any backward section of citizens," has been interpreted as a constitutional foundation for affirmative measures in favour of women workers, including quota requirements for women's representation in public employment, preferential treatment for women in government contracting, and legislative provisions that provide additional protections for women workers beyond those available to male workers. This provision is the constitutional foundation for the gender-specific provisions of the Bangladesh Labour Act, including the maternity protection provisions, and for any proposed expansion of those provisions.

The relationship between the constitutional equality guarantee in Article 28 and the directive principles of the Fundamental Principles of State Policy in Part II of the Constitution raises important jurisprudential questions. The Fundamental Principles, which include commitments to ensuring the right to work at a reasonable wage, to securing just and humane conditions of work, and to ensuring equality of opportunity for all citizens, are not directly enforceable as fundamental rights, but the Supreme Court has held that they can inform the interpretation of the enforceable fundamental rights provisions and that legislation enacted in furtherance of the Fundamental Principles is entitled to considerable judicial deference.

## 79.2 Statutory Anti-Discrimination Provisions and Their Interpretation

The Bangladesh Labour Act, 2006, as amended, contains several provisions addressing gender-based discrimination in employment, though these provisions are scattered across different chapters and their relationship to each other is not always clear. Section 345 of the Act provides that it is an unfair labour practice for an employer to discriminate against any worker on the ground of sex in matters of appointment, promotion, transfer, leave, or other terms and conditions of service. This general non-discrimination provision is supplemented by more specific provisions addressing discrimination in the context of maternity, sexual harassment, and trade union membership.

The Bangladesh Labour Act's provisions on equal remuneration for equal work are particularly significant and particularly inadequate in practice. Section 345A, introduced by the 2018 Amendment, provides that no employer shall pay to any worker wages at a rate less than the wages payable to another worker for the same work or work of equal value on the ground of sex. This provision adopts the "equal pay for work of equal value" standard, which is the standard required by ILO Convention No. 100 (Equal Remuneration Convention, 1951), ratified by Bangladesh.

The "equal value" standard is significantly broader than the older "equal pay for equal work" standard. While the latter requires equal pay only for workers performing identical or substantially identical tasks, the "equal value" standard requires equal pay for work that may be of equal value even if it is performed in different occupations, industries, or work settings. This broader standard is particularly important for addressing the systematic undervaluation of women's work in occupations that are predominantly female and that are systematically paid less than predominantly male occupations requiring comparable levels of skill, effort, and responsibility.

The practical enforcement of the equal pay provision of the Bangladesh Labour Act is, however, nearly non-existent. The provision does not establish any mechanism for job evaluation, wage comparison, or systematic enforcement, and the Department of Labour has not developed the institutional capacity or the regulatory framework necessary to implement the provision in practice. The Labour Courts have had very few cases brought under the equal pay provision, partly because workers are unlikely to be aware of their rights under it, partly because the legal and practical difficulties of establishing that work performed in different jobs is of "equal value" are formidable without institutional support, and partly because the practical risks of asserting an equal pay claim against an employer are high for workers in a weak bargaining position.

### 79.3 The Gender Pay Gap: Empirical Evidence and Legal Implications

The empirical evidence on the gender pay gap in Bangladesh reveals a pattern of systematic and persistent wage inequality between male and female workers that the formal anti-discrimination provisions of the Bangladesh Labour Act have done little to address. A comprehensive analysis of the Bangladesh Labour Force Survey data and other available sources reveals several important dimensions of the gender pay gap.

First, women workers in Bangladesh earn on average significantly less than male workers for equivalent work in the formal sector, with estimates of the gender pay gap in the formal sector

ranging from approximately twenty to thirty percent in various industry-level analyses. This gap is not fully explained by differences in education, experience, or occupation, suggesting that a component of the gap reflects discrimination rather than differences in productive characteristics.

Second, the sectoral concentration of women workers in low-wage industries, particularly garments manufacturing, contributes to a large overall gender pay gap that understates the degree of discrimination within any particular sector. Women garment workers earn wages at or near the legal minimum wage, while male workers in comparable manufacturing industries tend to earn significantly above the minimum wage. The legal minimum wage for the garments sector, which affects primarily female workers, is lower in real terms than the minimum wages applicable to male-dominated industries at comparable levels of skill.

Third, the intersection of gender and occupation produces a systematic pattern of occupational segregation in which the predominantly female occupations in the garments sector are at the bottom of the occupational and pay hierarchy, while the predominantly male occupations, including supervisory and technical roles, command significantly higher wages. This pattern of occupational segregation reflects both direct discrimination in hiring and promotion and the structural effects of social norms about gender-appropriate work and gender-appropriate authority.

Fourth, the informal economy presents a particularly striking gender pay gap. Women informal workers, who include domestic workers, home-based piece-workers, agricultural labourers, and street vendors, earn substantially less than their male counterparts, and their earnings are typically far below even the inadequate legal minimum wages applicable in the formal sector. The exclusion of informal workers from the formal labour law framework means that the formal anti-discrimination provisions of the Bangladesh Labour Act do not apply to the majority of women workers.

### 79.4 Occupational Segregation: Legal Analysis and Reform Proposals

Occupational segregation, the concentration of women and men in different occupations, industries, and levels of the employment hierarchy, is one of the most persistent and most difficult-to-address dimensions of gender inequality in the labour market. In Bangladesh, occupational segregation is deeply entrenched across all sectors of the economy and is shaped by a complex interaction of employer discrimination, social norms, educational differences, and the asymmetric distribution of care responsibilities between women and men.

The legal analysis of occupational segregation in Bangladesh must address two distinct but connected phenomena: horizontal segregation, the concentration of women in particular sectors and occupations such as garments manufacturing and domestic service, and vertical segregation, the concentration of women in the lower levels of the occupational hierarchy within any given sector or industry. Both forms of segregation have legal dimensions, in that they may reflect and be reinforced by unlawful discrimination in hiring, promotion, and assignment decisions, and both have significant economic consequences, contributing to the gender pay gap and to women's overall economic disadvantage.

The traditional liberal feminist response to occupational segregation focuses on removing formal legal barriers to women's employment in occupations from which they have been excluded, and on ensuring that anti-discrimination law is effectively enforced to prevent discriminatory decisions by individual employers. These measures are necessary but insufficient. The deeper causes of occupational segregation, including social norms that assign care responsibilities disproportionately to women and that define certain occupations as "women's work" and therefore low-status and low-paid, cannot be addressed by anti-discrimination law alone.

The structural feminist response, associated with scholars such as Fudge and Hunter, argues that addressing occupational segregation requires a fundamental rethinking of the legal framework governing the valuation of work, including the development of a genuine "comparable worth" or "pay equity" framework that would require systematic job evaluation to ensure that wages reflect the actual skill, effort, and responsibility required by jobs regardless of the gender composition of the workforce performing them. Such a framework, which has been adopted in some form in several jurisdictions including Ontario, Canada, and various Nordic countries, represents a more ambitious and potentially more effective approach to addressing the structural causes of the gender pay gap than the existing framework of individual anti-discrimination claims.

## 79.5 Work-Life Balance, Care Responsibilities, and the Law

One of the most important dimensions of gender inequality in the labour market is the asymmetric distribution of care responsibilities between women and men, which systematically disadvantages women in their ability to participate in paid employment on the same terms as men. In Bangladesh, as in most societies, women perform the overwhelming majority of unpaid care work, including childcare, elder care, and household management, in addition to their paid employment. This double burden of paid and unpaid work creates specific challenges for women's participation in the labour market, including pressure to work part-time or in interrupted careers, difficulty in competing for positions that require long or inflexible working hours, and vulnerability to dismissal or disadvantage in employment when care responsibilities conflict with employer expectations.

The legal framework for addressing the work-life balance challenge in Bangladesh is rudimentary and inadequate. The Bangladesh Labour Act contains provisions for maternity leave and benefit, as discussed above, but it does not contain provisions for parental leave that would enable fathers to share in childcare responsibilities, no provisions for flexible working arrangements that would allow workers to balance care responsibilities with employment obligations, and no provisions for employer-provided childcare or childcare subsidies that would reduce the practical barriers to women's workforce participation.

The Child Daycare Centre Act, 2021, which was adopted as a separate piece of legislation, represents an important step toward addressing the childcare dimension of the work-life balance challenge. The Act requires establishments of specified size to provide or facilitate access to childcare services for workers with young children. However, as of early 2026, the implementing rules for the Act have still not been finalized, which means that the Act's substantive provisions cannot be effectively enforced. This is a pattern that recurs across Bangladeshi labour legislation:

progressive primary legislation is enacted but sits unimplemented for years because the delegated legislation necessary to give it practical effect is not finalized.

The ILO's Workers with Family Responsibilities Convention, 1981 (Convention No. 156), which Bangladesh has not ratified, provides an important international standard for the development of a comprehensive work-life balance framework. Convention No. 156 requires ratifying states to take measures to enable workers with family responsibilities to become established or re-established in employment without discrimination, and to take account of the needs of workers with family responsibilities in community planning and in the organization and conditions of employment. Bangladesh's non-ratification of Convention No. 156 is an important gap in its international commitment to gender equality in employment, and ratification should be included in the reform agenda.

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## CHAPTER EIGHTY: SEXUAL HARASSMENT IN THE WORKPLACE: LAW, JURISPRUDENCE, AND PRACTICE

### 80.1 The Conceptual and Philosophical Dimensions of Sexual Harassment

Sexual harassment in the workplace is a phenomenon that sits at the intersection of gender equality law, human rights law, and labour law, and whose analysis demands engagement with both the philosophical literature on power and domination and the empirical literature on its causes, forms, and consequences. The theoretical treatment of sexual harassment has been dominated in the English-speaking legal world by Catharine MacKinnon's foundational analysis, which framed sexual harassment as a form of sex discrimination, a manifestation of the structural power of men over women in the workplace, rather than as merely a series of individual acts of personal misconduct.

MacKinnon's framework was radical at the time of its original articulation and remains controversial in some respects, but its core insight has been vindicated by decades of empirical research demonstrating that sexual harassment is pervasive, systematic, and disproportionately directed at women, particularly at women in subordinate positions in organizational hierarchies, and that it serves the function of maintaining male dominance in workplace structures by communicating to women that they do not fully belong in the employment sphere. This insight has important implications for the legal analysis of sexual harassment: it suggests that the law's primary task is not to address individual acts of misconduct but to transform the structural conditions of the workplace that make sexual harassment possible and frequent.

The republican political philosophy of Philip Pettit, discussed in Chapter One of this work in the context of the general philosophy of labour law, offers another important conceptual lens through which to understand sexual harassment. On a republican account, the wrong of sexual harassment is not merely that it causes psychological harm to particular individuals, though it does, but that it represents a form of domination: it subjects the harassed worker to the arbitrary power of the harasser, who can impose unwanted sexual attention, create a hostile work environment, or make the worker's employment conditions contingent on sexual compliance,

without the worker being able to effectively resist. This domination is incompatible with the republican ideal of freedom as non-domination, and its legal prohibition is required by the basic principle of republican liberty.

The recognition of sexual harassment as a form of domination has particularly important implications in the Bangladeshi context, where women garment workers face not only sexual harassment from male supervisors and coworkers but the broader structural domination of a workplace system organized entirely around the power of male owners, managers, and supervisors over a predominantly female workforce. In this context, sexual harassment is not an aberrant departure from an otherwise egalitarian workplace structure but an expression and reinforcement of the prevailing power relations of the workplace.

**80.2 The Legal Framework: From Judicial Guidelines to Statutory Provisions**

The development of the legal framework for addressing sexual harassment in the workplace in Bangladesh is a story of judicial activism filling legislative gaps, followed by partial legislative codification that left many gaps unfilled. The story begins with the Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh case of 2009.

The BNWLA case arose from a petition by the Bangladesh National Women Lawyers Association challenging the absence of any statutory framework for addressing sexual harassment in educational institutions and workplaces. The petitioners argued that the constitutional guarantees of equality, dignity, and protection from discrimination imposed positive obligations on the State to provide legal protection against sexual harassment, and that the failure to enact adequate legislation violated these constitutional obligations.

The High Court Division's judgment in the BNWLA case, delivered by Justice Syed Mahmud Hossain and Justice Gobinda Chandra Tagore, was a landmark decision in the development of Bangladesh's constitutional jurisprudence on gender equality. The Court held that sexual harassment constitutes a violation of the constitutional rights of dignity, equality, and freedom from discrimination guaranteed under Articles 27, 28, and 31 of the Constitution. The Court drew extensively on comparative jurisprudence from India, including the Indian Supreme Court's landmark Vishaka v. State of Rajasthan (1997) decision, which had itself established comprehensive guidelines for the prevention and redress of sexual harassment in the absence of statutory legislation.

Building on the Vishaka framework and adapting it to the Bangladeshi context, the High Court in BNWLA issued comprehensive guidelines requiring employers and educational institutions to establish sexual harassment complaint committees, to adopt sexual harassment prevention policies, to publicize workers' rights against sexual harassment, and to ensure that complaints of sexual harassment are investigated and addressed promptly and confidentially. The guidelines also established standards for the composition and procedures of complaint committees, requiring that the majority of members be women and that an external expert member be included to ensure impartiality.

These judicial guidelines, while legally binding on all employers and educational institutions in Bangladesh, were met with very limited compliance in practice. The Department of Labour did not conduct systematic monitoring of compliance with the guidelines, the majority of employers in the garments sector did not establish complaint committees as required, and the level of worker awareness of the guidelines was extremely low. The weakness of the enforcement framework meant that the potential protective impact of the guidelines was largely unrealized.

The Bangladesh Labour (Amendment) Act, 2013, introduced into the Bangladesh Labour Act the first statutory provisions on sexual harassment in the workplace. Section 332A of the amended Act defined sexual harassment and established obligations for employers to prevent and address it, including the requirement to establish sexual harassment complaint committees in establishments with specified numbers of employees. The 2018 Amendment further elaborated these provisions, clarifying the definition of sexual harassment, specifying the composition and procedures of complaint committees, and establishing penalties for employers who failed to comply with their obligations.

The Bangladesh Labour (Amendment) Ordinance, 2025, introduced additional provisions addressing harassment and anti-harassment procedures, including prohibitions on specific forms of workplace harassment and requirements for more robust implementation of complaint mechanisms. The 2025 reforms also introduced provisions on employer liability for the hostile work environment created by tolerance of sexual harassment, moving the legal framework closer to the vicarious liability standard applied in some comparative jurisdictions.

### 80.3 Doctrinal Analysis: The Definition of Sexual Harassment and Its Scope

The definition of sexual harassment in the Bangladesh Labour Act, as amended, is broadly drafted and encompasses both "quid pro quo" harassment, in which sexual favours are demanded as a condition of employment benefits, and "hostile work environment" harassment, in which unwanted sexual conduct creates a work environment that is intimidating, hostile, or offensive. This two-pronged definition reflects the framework developed by the United States courts in their interpretation of Title VII of the Civil Rights Act and adopted in various forms by many jurisdictions, including Bangladesh.

The "quid pro quo" form of sexual harassment is perhaps the most clearly recognized form in Bangladesh's legal and cultural context. It encompasses situations in which a supervisor or other person in a position of authority demands sexual favours from a subordinate worker as a condition of continued employment, promotion, pay increases, or other employment benefits, or threatens adverse consequences if the worker refuses. This form of harassment is readily characterized as an abuse of power and is subject to relatively clear legal standards.

The "hostile work environment" form of sexual harassment is conceptually more complex and has been more contested in comparative jurisprudence. It encompasses situations in which a pattern of unwanted conduct of a sexual nature, which may include verbal comments, jokes, gestures, or physical contact, creates a work environment that is intimidating or offensive. The legal standard for determining what constitutes a hostile work environment has been developed through a combination of the subjective test, requiring that the complainant actually found the

environment hostile or offensive, and an objective test, requiring that a reasonable person in the complainant's position would have found the environment hostile or offensive.

The objective reasonableness standard in hostile work environment analysis raises the question of whose perspective is taken as the reference point. The traditional "reasonable person" standard has been criticized by feminist legal scholars including MacKinnon and Nancy Ehrenreich on the ground that the "reasonable person" is implicitly the "reasonable man," and that evaluating a woman's experience of sexual harassment from the perspective of a "reasonable man" systematically understates the harm caused by conduct that women find offensive or intimidating. The "reasonable woman" standard, adopted by some US circuit courts and endorsed by feminist legal scholars, evaluates the conduct from the perspective of a reasonable woman in the complainant's position, recognizing that women's experience of workplace sexual conduct is often qualitatively different from men's experience of the same conduct.

The Bangladesh Labour Act and the High Court's BNWLA guidelines do not explicitly address the question of which objective standard should be applied in hostile work environment cases. The developing jurisprudence of the Labour Courts and the High Court Division on this question is examined in detail in Chapter Eighty-One of this Part, where the specific challenges facing women garment workers who bring sexual harassment claims are analyzed in the context of the broader picture of women's labour rights in the RMG sector.

**80.4 The Complaint Committee System: Assessment and Critique**

The sexual harassment complaint committee system established by the Bangladesh Labour Act, as amended, and the BNWLA guidelines represents the primary institutional mechanism for addressing sexual harassment in the workplace. The system requires employers above a specified size threshold to establish internal complaint committees consisting of a majority of women members and including an external expert member from an NGO or other organization familiar with gender equality issues.

The complaint committee system has both theoretical merits and significant practical limitations. In theory, the internal complaint mechanism is more accessible to workers than formal legal proceedings in the Labour Courts, because it does not require legal representation, involves less formal procedures, and produces a decision more quickly than the court process. The requirement that the committee include an external expert member provides some check on the risk that an entirely internal committee will be captured by management interests and fail to impartially investigate complaints.

In practice, the complaint committee system has functioned poorly. A comprehensive study of compliance with the complaint committee requirements in the garments sector, conducted by the Solidarity Center in partnership with Bangladeshi research institutions and published in multiple reports between 2018 and 2025, found that the majority of RMG factories, including many of the largest and best-resourced factories in the sector, had failed to establish complaint committees as required by law. Among factories that had established committees, many had not received any formal training on harassment prevention or complaint procedures, many did not have accessible

complaint mechanisms, and many did not follow the procedural requirements of the BNWLA guidelines or the statutory provisions in handling complaints.

The low rate of formal complaints through the committee system, even in factories where committees have been established, reflects multiple factors including workers' fear of retaliation for making complaints, lack of awareness of the committee system, distrust of internal complaint mechanisms controlled by the employer, and the social stigma and difficulties of proof that make sexual harassment complaints particularly difficult to pursue. Women workers who have experienced sexual harassment frequently cite the risk of dismissal or other retaliation, the fear of social stigma if their experience becomes known in their community, and the difficulty of proving harassment against a more powerful supervisor as the primary reasons for not making formal complaints.

The 2025 Amendment introduced some improvements to the complaint committee system, including stronger provisions on confidentiality, clearer requirements for the timeframe within which complaints must be investigated and decisions taken, and enhanced penalties for employers who fail to establish committees or who retaliate against workers for making complaints. These improvements are welcome, but they do not address the fundamental structural problems of the internal complaint mechanism, including the inherent conflict of interest of an employer-established committee investigating complaints against employer employees, and the power imbalance that makes it difficult for complainants to pursue their rights against more powerful opponents through an internal process.

### 80.5 Sexual Harassment and the Criminal Law

The relationship between sexual harassment law and the criminal law in Bangladesh creates significant complexity for victims of workplace harassment. While the Bangladesh Labour Act's civil framework for addressing sexual harassment provides remedies including compensation, reinstatement, and employer penalties, certain forms of workplace sexual harassment may also constitute criminal offences under the Penal Code, 1860, and the Prevention of Women and Children Repression Act, 2000 (as amended). These criminal law frameworks create alternative pathways for redress but also create additional risks and complications for complainants.

The Prevention of Women and Children Repression Act, 2000, is the primary criminal law instrument for addressing sexual violence and harassment against women and children in Bangladesh. The Act creates specific offences and provides for their prosecution before designated tribunals (Nari O Shishu Nirjatan Daman Tribunals). However, the Act's provisions are designed primarily for cases of rape and serious physical sexual violence rather than for the kind of verbal, gestural, and environmental harassment that constitutes a significant proportion of workplace sexual harassment. The application of the Act's provisions to workplace harassment that does not involve physical violence or explicit sexual demands is uncertain.

The intersection of criminal and civil law frameworks in the sexual harassment field creates risks for complainants who pursue criminal remedies. Criminal proceedings require a higher standard of proof, are more formal and adversarial in character, take much longer to resolve, and expose the complainant to more intensive cross-examination of her account of events than civil

complaint committee proceedings. The social stigma of being identified as a victim of sexual assault, which is unfortunately still significant in the Bangladeshi social context, is also a greater concern in criminal proceedings where the complainant's identity may be more widely known.

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## CHAPTER EIGHTY-ONE: WOMEN WORKERS IN THE READY-MADE GARMENTS SECTOR: A CASE STUDY IN STRUCTURAL GENDER INEQUALITY

### 81.1 The Political Economy of Women's Employment in the RMG Sector

The ready-made garments sector is the most important sector of Bangladesh's formal economy, generating approximately eighty-four percent of export earnings and employing approximately four million workers, of whom between eighty and eighty-five percent are women. The emergence of this sector from essentially nothing in the late 1970s to its current position as the engine of Bangladesh's export-led development strategy represents one of the most remarkable economic transformations in modern development history. It is also a transformation that has been built upon, and has in turn reinforced, a specific structure of gender inequality in the labour market.

The political economy of women's employment in the RMG sector is not accidental. The sector's competitive advantage in global markets is fundamentally premised on the availability of a large supply of female labour willing to work for wages at or near the legal minimum in conditions of considerable hardship and insecurity. The low wages that underpin this competitive advantage are not simply the result of market forces determining the price of labour: they are the result of a specific social and legal structure that maintains women workers' bargaining power at a minimum and that prevents the development of effective collective organization that might enable women workers to claim a larger share of the value they produce.

The social structure of women's low bargaining power in the RMG sector includes several interlocking elements. First, the majority of women workers in the RMG sector are recent migrants from rural areas who lack the social networks and organizational experience that would support effective collective action in the urban industrial context. Second, women workers face specific social pressures, including family and community expectations that they will remain in employment only for a limited period before marriage, that make sustained engagement in trade union organization difficult. Third, women's primary responsibility for household and childcare work creates time constraints that limit their participation in union meetings and activities, which typically occur outside regular working hours. Fourth, the pervasive sexual harassment and gender-based discrimination in the sector creates a social environment of intimidation and vulnerability that suppresses women's willingness to assert their rights.

The result of this structure is a workforce that is simultaneously central to Bangladesh's economic development and largely unable to effectively organize to claim a share of the wealth that development generates. The average real wages of women garment workers have risen significantly in nominal terms over the past decade, but they remain close to the legal minimum wage and far below the living wage calculations of independent researchers. The 2023 minimum

wage increase, which raised the garments sector minimum wage from Tk 8,000 to Tk 12,500 per month, represented a significant nominal improvement but has been eroded by inflation and remains well below the cost of living in Dhaka and other major industrial cities.

### 81.2 Working Conditions and Legal Protections: The Gap Between Law and Practice

The Bangladesh Labour Act's provisions on working conditions, including limits on working hours, requirements for rest breaks, and standards for occupational safety and health, apply in principle to all establishments in the RMG sector. The practical reality of compliance with these provisions is, however, far from the statutory standard, and the specific experiences of women workers in the sector illustrate with particular clarity the gap between legal provision and practical reality that is a persistent theme of this work.

The statutory limit of eight hours per day and forty-eight hours per week for regular working time, with provision for overtime at enhanced rates, is routinely exceeded in the garments sector during peak production periods. Women workers report working twelve, fourteen, or even sixteen-hour days during periods of high production demand, with inadequate breaks and in some cases without the overtime premium to which they are entitled. The legal limit on overtime of twelve hours per week is widely disregarded, and the requirement that overtime be voluntary rather than compulsory is in practice largely illusory, because workers who refuse to work overtime risk dismissal or other adverse treatment.

The physical conditions of work in many garment factories present specific health and safety challenges for women workers. Prolonged standing, repetitive hand and arm movements, poor ventilation, high temperatures, and noise contribute to a range of occupational health problems including musculoskeletal disorders, respiratory conditions, and hearing damage. Women workers who are pregnant face particular risks from these conditions, since the physical demands of factory work are not automatically adjusted to accommodate pregnancy, and since many women workers feel unable to disclose their pregnancies for fear of dismissal or reassignment to more demanding tasks.

The sanitation facilities available to women workers in many garment factories are inadequate in both quantity and quality. Insufficient toilet facilities, inadequate privacy, and unhygienic conditions create specific difficulties for women workers, particularly during menstruation and pregnancy. The requirement of the Bangladesh Labour Act that employers provide adequate sanitation and welfare facilities is not consistently enforced, and the compliance monitoring conducted through the International Accord for Health and Safety in the Textile and Garment Industry has identified inadequate sanitation facilities as a recurring non-compliance issue in a significant proportion of audited factories.

### 81.3 The Post-Rana Plaza Safety Reforms and Their Gender Dimensions

The Rana Plaza factory collapse of April 2013, which killed 1,134 workers and injured more than 2,500 others, was the most devastating industrial disaster in Bangladesh's history and one of the worst in global manufacturing history. The collapse of the Rana Plaza building, which housed five garment factories producing for major European and American brands, generated an

international crisis that transformed the global debate about labour rights in global supply chains and triggered a wave of legal and institutional reforms in Bangladesh's occupational safety and health framework.

The gender dimensions of the Rana Plaza disaster were acute. The overwhelming majority of the victims were women, reflecting the demographic composition of the garments workforce. The disaster exposed not only the structural deficiencies of Bangladesh's building safety regulatory framework but the specific vulnerabilities of women workers in an industry where the desire to maintain production schedules frequently overrides safety concerns, and where workers who raise safety concerns risk dismissal or other retaliation.

The aftermath of Rana Plaza produced two significant institutional innovations that have had lasting consequences for occupational safety and health in the Bangladesh garments sector: the Accord on Fire and Building Safety in Bangladesh (subsequently the International Accord for Health and Safety in the Textile and Garment Industry) and the Alliance for Bangladesh Worker Safety. Both instruments were discussed from the perspective of collective labour rights in Part Eight of this work; the gender dimensions of these initiatives require specific attention here.

The International Accord's monitoring and remediation work has produced significant improvements in structural safety, fire safety, and electrical safety in the factories it covers. These improvements have direct gender implications: the workers whose lives and bodily integrity have been protected by the Accord's work are predominantly women, and the reduction in the risk of mass industrial disasters of the Rana Plaza type is primarily a reduction in risk to women workers. The Accord's complaint mechanism, which allows workers to raise safety concerns with the Accord secretariat rather than relying on the employer's internal mechanisms, has been used disproportionately by women workers and has provided an important avenue for raising gender-specific safety concerns including harassment by male supervisors and inadequate sanitation facilities.

### 81.4 The Role of Global Supply Chain Governance in Advancing Women Workers' Rights

The governance of Bangladesh's garments sector through global supply chain mechanisms, including the International Accord, brand-specific codes of conduct, and increasingly the mandatory human rights due diligence legislation of importing countries, creates a complex multi-level governance environment that has both positive and problematic implications for women workers' rights.

The positive implications include the fact that global brand purchasing power, when organized through credible monitoring mechanisms, can create incentives for factory compliance with labour standards that exceed what the national regulatory framework is capable of generating through its own enforcement mechanisms. Major global brands that depend on their reputation with consumers who are increasingly concerned about the conditions in which their goods are produced have genuine financial incentives to avoid being associated with factories where women workers are abused, exploited, or killed. These incentives, while insufficient on their own to generate full compliance with labour standards, have in practice produced meaningful

improvements in safety conditions in the factories covered by brand compliance monitoring programmes.

The problematic implications of supply chain governance include the fact that these mechanisms are selective in their coverage, applying primarily to the largest and most visible factories producing for major global brands and leaving uncovered the large informal and subcontracting segment of the garments industry where conditions are typically worse. They also tend to be more effective at addressing visible physical safety hazards, which are amenable to audit and remediation, than at addressing the less visible dimensions of workers' rights including freedom of association, collective bargaining, equal pay, and protection against gender-based violence, which require sustained engagement with the social dynamics of the workplace rather than periodic technical inspections.

The EU's Corporate Sustainability Due Diligence Directive (CS3D), adopted in 2024, represents the most ambitious attempt yet to use mandatory due diligence requirements as a mechanism for improving labour standards across global supply chains, including the Bangladesh garments industry. The Directive requires large EU companies to identify, prevent, and address human rights and environmental impacts across their supply chains, and it explicitly includes freedom of association, collective bargaining, and protection against gender-based violence among the human rights that must be addressed. The CS3D's implementation, which is being phased in from 2027, will create additional legal obligations for EU buyers from Bangladesh and may create further incentives for improvements in women workers' rights in the sector.

## 81.5 Trade Union Organizing and Women's Leadership in the RMG Sector

The relationship between women workers' rights and trade union organizing in the RMG sector is one of the most important and most contested dimensions of the broader labour rights landscape in Bangladesh. As analyzed extensively in Part Eight of this work, the trade union movement in Bangladesh's garments sector has historically been characterized by low density, political fragmentation, and external interference. But the gender dimension of this picture adds an additional and important layer of complexity.

Women workers, who constitute approximately eighty percent of the garments sector workforce, are significantly underrepresented in trade union leadership at all levels. Survey research by the Solidarity Center and the International Labour Organization consistently finds that women workers face specific barriers to union participation and leadership, including time constraints from domestic responsibilities, social and family opposition to women's participation in union activities, harassment and intimidation from male supervisors and male union leaders, and the perception, reinforced by the culture of many existing unions, that trade union leadership is inherently masculine work.

This underrepresentation is not merely a question of fairness within the trade union movement, though it is that. It has direct consequences for the effectiveness of trade unionism in representing women workers' interests. Trade unions with predominantly male leadership that are not genuinely accountable to women members are unlikely to prioritize the issues that matter most to women workers, including maternity protection, childcare, sexual harassment, equal pay,

and working time arrangements that accommodate care responsibilities. The result is a collective bargaining system that even where it functions, as analyzed in Part Eight, tends to negotiate improvements in areas where men's and women's interests coincide while neglecting the gender-specific interests of the majority female workforce.

The Bangladesh Labour (Amendment) Ordinance, 2025, included provisions designed to address this gap. The Ordinance introduced requirements for a minimum proportion of women in trade union leadership, with the specific percentage to be determined by the government in consultation with the tripartite council. This affirmative measure, while insufficient in isolation to transform the gender dynamics of trade union organization, represents an important signal of the legal framework's commitment to genuine women's representation in the institutions of collective labour relations.

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## CHAPTER EIGHTY-TWO: DOMESTIC WORKERS IN BANGLADESH: A CASE STUDY IN INTERSECTIONAL EXCLUSION

### 82.1 The Legal Status of Domestic Workers Before the 2025 Amendment

Domestic workers, defined as persons who perform household services for private households, constitute one of the largest and most economically significant categories of workers in Bangladesh, with estimates of the number employed ranging from one to two million. They are also among the most economically vulnerable and legally unprotected categories of workers, working in private spaces that are difficult to regulate, in employment relationships that are typically informal and unwritten, and in conditions of economic dependence and social isolation that make effective assertion of their rights extremely difficult.

Before the Bangladesh Labour (Amendment) Ordinance, 2025, domestic workers were explicitly excluded from the scope of the Bangladesh Labour Act, 2006. The exclusion was contained in the Act's definition of "establishment," which limited the Act's application to specified categories of commercial and industrial enterprises and did not include private households. This exclusion meant that domestic workers had no statutory entitlement to minimum wages, maternity benefit, annual leave, sick leave, or any of the other protections provided by the Bangladesh Labour Act. They were not entitled to compensation for work-related injuries under the Act's workers' compensation provisions, they had no right to organize or bargain collectively under its trade union provisions, and they had no access to the dispute resolution mechanisms of the Labour Courts.

The exclusion of domestic workers from formal labour law protection is a nearly universal feature of labour law systems around the world, though it is one that has attracted increasing critical attention and legal challenge over the past two decades. It reflects several interacting factors: the historical conception of domestic service as a personal relationship rather than an employment relationship, the location of domestic work in the private sphere of the household which law has traditionally treated as beyond the reach of public regulation, the political weakness of domestic workers as a category unable to organize collectively and lacking the

economic leverage of workers in strategic industries, and the gender and class dimensions of domestic work which tends to be performed by women from lower-income and lower-status social groups for employers from higher-income and higher-status groups.

The ILO Domestic Workers Convention, 2011 (Convention No. 189), which Bangladesh has not ratified, represents the most important international standard for the protection of domestic workers' rights. Convention No. 189 requires ratifying states to provide domestic workers with working conditions not less favourable than those applicable to workers generally, including minimum wage coverage, limits on working hours, social security protection, maternity protection, and the right to organize and bargain collectively. The Convention explicitly addresses the specific vulnerabilities of domestic workers, including requirements for adequate notice periods in employment contracts, protection against abusive working conditions, and measures to address the risk of trafficking and forced labour.

### 82.2 The 2025 Amendment: Partial Recognition and Its Limits

The Bangladesh Labour (Amendment) Ordinance, 2025, took a historically significant step by recognizing domestic workers as "workers" for the first time under the Bangladesh Labour Act. The recognition was, however, explicitly partial: the Ordinance amended the Act to extend only specific chapters of the Act to domestic workers, rather than bringing domestic workers within the general scope of the Act's protections.

The chapters extended to domestic workers by the 2025 Ordinance were Chapter XII (Workers' Compensation for Injury), Chapter XIII (Workers' Welfare), and Chapter XIV (Penal Provisions and Miscellaneous). This extension gave domestic workers, for the first time, statutory entitlements to compensation for work-related injuries, access to certain welfare provisions, and the protection of the Act's criminal penalties for violations of their rights. Critically, the Ordinance also extended to domestic workers the provisions of the Act relating to freedom from forced labour and the right to organize and bargain collectively, recognizing domestic workers' right to form trade unions for the first time.

These are genuinely significant advances. The recognition of domestic workers' right to compensation for work-related injuries addresses one of the most acute practical vulnerabilities of domestic workers, who frequently suffer injuries in the course of their work but have had no legal recourse for compensation. The recognition of domestic workers' right to organize and bargain collectively, while its practical realization will be extremely challenging given the dispersed and isolated nature of domestic employment, represents an important symbolic and normative commitment to domestic workers' status as full workers with the same fundamental rights as workers in any other sector.

However, the limitations of the 2025 reform are equally significant. The chapters of the Bangladesh Labour Act that were not extended to domestic workers by the 2025 Ordinance include the minimum wage provisions, the working hours provisions, the annual leave and sick leave provisions, the maternity protection provisions, the provisions on unfair dismissal, and the equal treatment provisions. This means that domestic workers remain without statutory protection in precisely the areas where their practical vulnerability is most acute.

The exclusion of maternity protection from the chapters extended to domestic workers is particularly striking, given that domestic workers are overwhelmingly women of reproductive age and that the protection of pregnant domestic workers against dismissal and the provision of maternity benefit are among the most basic requirements of gender justice in the employment field. The 2025 Ordinance's failure to extend maternity protection to domestic workers represents a significant missed opportunity, and the Labour Reform Commission's recommendation that maternity protection be extended to all categories of workers, including domestic workers, should be implemented in the next phase of legislative reform.

The exclusion of domestic workers from minimum wage protection is also deeply problematic. Without a statutory minimum wage, domestic workers' wages are determined entirely by the relative bargaining power of employer and worker, and given the enormous power imbalance in domestic employment relationships, the result is typically wages far below any reasonable minimum standard. Research by domestic worker organizations in Bangladesh consistently finds that domestic workers earn wages that are a fraction of those earned by workers in the formal sector for equivalent hours of work, and that wage theft, late payment, and non-payment of agreed wages are pervasive.

### 82.3 The "Live-In" Problem: Accommodation, Privacy, and Control

A specific dimension of domestic workers' vulnerability that requires particular legal attention is the situation of "live-in" domestic workers, who reside in the households where they are employed and are therefore subject to a degree of control and surveillance that is qualitatively different from the employment relationship of workers who live independently. Live-in domestic workers' access to rest, privacy, and free time outside working hours is entirely dependent on the goodwill of their employers, and the absence of legal standards for their accommodation and living conditions creates significant potential for abuse.

The live-in arrangement also creates particular risks of a kind that ILO Convention No. 189 was specifically designed to address: the risk that domestic workers who are housed in their employers' premises may find it extremely difficult to leave the employment relationship even if the conditions are abusive, because leaving would mean simultaneous loss of employment, housing, and sometimes access to personal documents. This "captive" quality of live-in domestic work creates risks of forced labour and trafficking that go beyond the ordinary vulnerabilities of employment relationships.

In Bangladesh, where a significant proportion of domestic workers are young girls and women from rural areas who have migrated to urban areas to find work and who may not have independent social networks or safe alternative housing, the live-in arrangement creates acute risks. Reports by human rights organizations including Manusher Jonno Foundation and Ain O Salish Kendra have documented numerous cases of domestic workers being subjected to physical abuse, sexual violence, wage theft, and restrictions on their freedom of movement by employers.

The Child Act, 2013, which governs the employment of persons under eighteen years of age, provides some protection for child domestic workers. But the practical enforcement of the Child Act in the domestic sphere is extremely difficult, and child domestic labour, while formally

prohibited, remains widespread. The intersection of child labour and domestic work creates a particularly acute form of exploitation, in which young girls who have migrated from rural areas without their parents are entirely dependent on the goodwill of employers who may provide little or no education, pay no wages, and subject the child to conditions that amount to servitude.

### 82.4 The Question of Recognition: Strategies for Domestic Worker Organizing

The recognition of domestic workers' right to organize under the 2025 Amendment creates a legal foundation for domestic worker organizing, but the practical challenges of organizing workers who are employed in private households, who are geographically dispersed, who may have little opportunity for regular contact with other domestic workers, and who face high risks of dismissal if their organizing activities become known to their employers are formidable.

The comparative experience of domestic worker organizing in other jurisdictions is instructive. In several countries, including Hong Kong, Uruguay, and South Africa, domestic workers have been able to organize effective trade unions and to negotiate improvements in their working conditions through collective bargaining, notwithstanding the structural challenges of organizing in a dispersed and informal sector. The key enabling factors in these successful organizing efforts include the development of community-based rather than enterprise-based union structures, the use of domestic worker centers as focal points for information, legal assistance, and organizing activities, the engagement of NGOs and civil society organizations in supporting domestic worker empowerment, and in some cases the active support of the state in recognizing and facilitating domestic worker organizing.

In Bangladesh, a number of civil society organizations including the Domestic Workers' Rights Network, Karmojibi Nari, and various affiliates of the Bangladesh Jatiya Shramik Federation have been developing domestic worker organizing initiatives, with assistance from the ILO and international partners. These initiatives have had some success in raising awareness of domestic workers' rights and in building the organizational foundations for effective collective action, but they have operated in a legal environment that until 2025 did not recognize domestic workers as legal subjects with rights to organize, and that still, even after the 2025 amendment, fails to provide domestic workers with the full range of substantive rights necessary for effective collective bargaining.

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## CHAPTER EIGHTY-THREE: WOMEN WORKERS IN AGRICULTURE, TEA GARDENS, AND THE INFORMAL ECONOMY

### 83.1 Agricultural Women Workers: The Ultimate Legal Invisibility

Agricultural workers constitute approximately forty percent of Bangladesh's total workforce, and women constitute a significant and probably underestimated proportion of this workforce. Women perform a wide range of agricultural tasks including transplanting rice seedlings, harvesting crops, post-harvest processing, and the maintenance of kitchen gardens and small livestock. This work is economically productive, constituting an important contribution to

household food security and agricultural output, but it is systematically undercounted in official labour force surveys that rely on respondents' self-reports of their "occupation," and these self-reports are shaped by social norms that define women's agricultural work as a natural extension of their domestic role rather than as "real" employment.

The legal invisibility of agricultural women workers is almost complete. Agricultural workers are excluded from the scope of the Bangladesh Labour Act, 2006, and are not covered by any specific agricultural labour legislation that provides equivalent protections. There is no statutory minimum wage for agricultural work, no legal limit on agricultural working hours, no provision for annual leave or sick leave, no maternity protection, and no right to organize and bargain collectively under any statute that applies to agricultural workers. The Constitution's Fundamental Principles of State Policy, which commit the State to ensuring just and humane conditions of work, apply in principle to agricultural workers, but these principles are not directly enforceable and have generated minimal specific legislative action in the agricultural sector.

The specific vulnerabilities of women agricultural workers include physical safety risks from work in extreme heat and from exposure to pesticides and other agricultural chemicals, significant risks of sexual harassment and gender-based violence in field settings where supervision and privacy are limited, the particular risks of pregnancy and breastfeeding in physically demanding field conditions without legal protection, and the economic vulnerability of casual day labourers who are paid by the day without any guarantee of regular work or income.

### 83.2 Tea Garden Workers: Ethnicity, Gender, and Labour Law

The tea gardens of Bangladesh's Sylhet division employ a workforce of approximately one hundred thousand workers, the majority of whom are from adivasi communities, the indigenous peoples of the region who were originally brought to the tea gardens as indentured labourers by the British colonial administration in the nineteenth century. Women constitute approximately sixty percent of the tea garden workforce, performing the labour-intensive work of tea leaf plucking, which is defined by the industry as "women's work" and paid at rates significantly lower than the "men's work" of tea processing and machinery operation.

The legal framework governing tea garden workers is provided by the Bangladesh Tea Estate Staff and Workers' Welfare Fund Ordinance, 1986, and related legislation, rather than the Bangladesh Labour Act, 2006. This separate legislative framework provides some protections for tea garden workers, including minimum wages, housing obligations, healthcare facilities, and maternity protection provisions. However, the level of protection provided is in several respects lower than that provided by the Bangladesh Labour Act, and the enforcement of the tea garden labour legislation is chronically weak.

The specific situation of women tea garden workers illustrates with particular clarity the operation of intersectional disadvantage. As women, they face the general disadvantages of gender in the labour market. As adivasi women, they face additional disadvantages related to their ethnic and cultural identity, including the language barriers that limit their access to legal

information and formal dispute resolution processes, the social and geographic isolation of tea garden communities from the mainstream of Bangladeshi civil society, and the particular forms of discrimination that adivasi women face in a society where their cultural practices and social norms are marginalized.

The maternity protection provisions applicable to tea garden women workers present a specific intersection of gender and ethnicity that deserves particular attention. Adivasi women's cultural practices around childbirth and infant care may differ significantly from the assumptions embedded in the formal maternity protection framework, and the application of a framework designed for urban industrial workers to the situation of women working in remote rural tea gardens requires sensitivity to these cultural differences. The ILO's guidelines on maternity protection in plantation and agricultural work, which address some of these specific challenges, have not been fully reflected in the Bangladesh tea garden labour legislation.

### 83.3 Home-Based Workers and the Informal Economy: Gender and Invisibility

Home-based workers, who perform productive work in their own homes for payment from an employer or contractor, constitute an important but largely invisible category of workers in Bangladesh's informal economy. The majority of home-based workers are women, and they are employed in a wide range of sectors including garment embroidery and stitching, handicraft production, food processing, and assembly work. The home-based character of their work, combined with its informal and often subcontracting nature, places them outside the scope of virtually all formal labour regulation.

The political economy of home-based work in Bangladesh reflects the gendered structure of the broader economy. Women who are unable to take up formal factory employment because of family or community constraints on their mobility or because they have primary care responsibilities that prevent them from working fixed hours outside the home are frequently engaged in home-based work as an alternative source of income. The conditions under which this work is performed, including very low piece rates, no guaranteed minimum earnings, no social security protection, and complete vulnerability to the contractor's arbitrary decisions about work availability and payment, reflect the weak bargaining position of workers who lack any alternative source of income and who cannot easily challenge their contractors without risking the loss of the work entirely.

The development of legal frameworks specifically addressing home-based workers' rights is an important frontier for labour law reform in Bangladesh and globally. Several countries, including Pakistan, India, and Thailand, have developed or are developing specific legislative frameworks for home-based workers that extend minimum wage protection, social security coverage, and anti-discrimination provisions to this category of workers. In Bangladesh, the Labour Reform Commission's April 2025 report included specific recommendations for the development of a legal framework for home-based workers, recognizing the importance of extending formal labour law protection to this large and vulnerable workforce, but the 2025 Ordinance and 2026 Amendment Bill did not implement these recommendations.

# CHAPTER EIGHTY-FOUR: INTERNATIONAL STANDARDS, CEDAW, AND BANGLADESH'S COMPLIANCE

## 84.1 CEDAW and Its Implications for Bangladesh's Labour Law

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Bangladesh ratified in 1984, constitutes the most comprehensive international human rights instrument specifically addressing the rights of women, and its provisions on employment and labour rights create legally binding obligations that are directly relevant to the assessment of Bangladesh's labour law framework.

Article 11 of CEDAW is the central provision on women's employment rights. It requires states parties to take all appropriate measures to eliminate discrimination against women in the field of employment, in order to ensure, on a basis of equality of men and women, the same rights, including the right to work; the right to the same employment opportunities; the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service; the right to equal remuneration; the right to social security; and the right to protection of health and to safety in working conditions.

Article 11(2) specifically addresses maternity protection, requiring states parties to take appropriate measures to prevent dismissal on the grounds of pregnancy or of maternity leave and to introduce maternity leave with pay or comparable social benefits without loss of former employment, seniority, or social allowances. This provision imposes specific legal obligations on Bangladesh to protect pregnant workers against dismissal and to provide adequate maternity benefits.

The CEDAW Committee's monitoring of Bangladesh's compliance with these obligations has identified persistent and serious failures in several areas. In its most recent Concluding Observations on Bangladesh, adopted in 2023, the Committee expressed concern about the high percentage of women in low-paid and unregulated work in the garments and domestic service sectors, the inadequate enforcement of equal pay for work of equal value, the limited access of women workers to social security, the high incidence of workplace violence and sexual harassment, and the inadequate implementation of maternity protection legislation.

The Committee's recommendations to Bangladesh included specific calls for: extending the scope of the Labour Act to cover all categories of workers including domestic workers and agricultural workers; introducing social insurance-based financing of maternity benefits to eliminate the employer-liability incentive to discriminate against pregnant workers; enforcing the equal pay for work of equal value provision through systematic job evaluation mechanisms; strengthening the complaint and remediation mechanisms for sexual harassment in the workplace; and ensuring that women workers have meaningful access to trade union rights and collective bargaining.

## 84.2 ILO Conventions and Their Application to Bangladesh

Bangladesh has ratified all ten fundamental ILO Conventions, which include the two equality conventions (Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination in Employment and Occupation), the two forced labour conventions, the two child labour conventions, and the two freedom of association conventions. These ratifications create directly binding international legal obligations that are subject to monitoring by the ILO's Committee of Experts on the Application of Conventions and Recommendations.

ILO Convention No. 100 (Equal Remuneration Convention, 1951) requires ratifying states to ensure that workers receive equal remuneration for work of equal value regardless of sex. As analyzed in Chapter Seventy-Nine, Bangladesh's formal incorporation of this standard in the Bangladesh Labour Act has not been accompanied by the institutional framework necessary for its effective implementation. The Committee of Experts has consistently noted the absence of effective mechanisms for determining and enforcing equal pay for work of equal value in Bangladesh, and has called for the development of objective job classification and wage evaluation mechanisms.

ILO Convention No. 111 (Discrimination (Employment and Occupation) Convention, 1958) requires ratifying states to adopt and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. The Convention's definition of "discrimination" includes any distinction, exclusion, or preference made on the basis of sex that nullifies or impairs equality of opportunity or treatment in employment or occupation. Bangladesh's implementation of Convention No. 111 in relation to gender discrimination has been assessed by the Committee of Experts as inadequate, particularly in relation to the enforcement mechanisms for addressing discrimination in hiring and promotion.

The ILO's Convention No. 183 (Maternity Protection Convention, 2000), which Bangladesh has not yet ratified, represents the primary contemporary international standard for maternity protection. Convention No. 183 requires ratifying states to provide maternity leave of not less than fourteen weeks, of which six weeks must be compulsorily taken after childbirth; to ensure that the level of benefits provided is sufficient to allow the woman to maintain herself and her child in proper conditions of health and with a suitable standard of living; to protect pregnant workers and women who have recently given birth or who are breastfeeding against dismissal; and to ensure that maternity protection is provided without discrimination. Bangladesh's ratification of Convention No. 183 should be included in the reform agenda, as it would create stronger and more specifically enforceable international legal obligations in the maternity protection field.

### 84.3 The October 2025 Ratifications: Conventions 155, 187, and 190

The ratification by Bangladesh in October 2025 of ILO Conventions Nos. 155 (Occupational Safety and Health Convention, 1981), 187 (Promotional Framework for Occupational Safety and Health Convention, 2006), and 190 (Violence and Harassment Convention, 2019) represents a significant expansion of Bangladesh's international commitments in the fields of occupational safety and health and the prevention of violence and harassment at work. Chief Adviser

Muhammad Yunus's personal signing of the ratification instruments was a significant political gesture, signalling the interim government's commitment to aligning Bangladesh's labour law framework with international standards.

Convention No. 190, which prohibits violence and harassment in the world of work and defines "violence and harassment" to include gender-based violence and harassment, is particularly significant for the analysis of women workers' rights. Convention No. 190 is the first international labour standard specifically and comprehensively addressing gender-based violence at work, and its ratification by Bangladesh creates binding obligations to establish legal frameworks for preventing, addressing, and providing remedies for gender-based violence in the workplace.

The definition of "violence and harassment" in Convention No. 190 is broad, encompassing both physical and psychological harm, covering conduct occurring in the workplace, in places where workers are paid, take rest breaks, or eat, during work-related trips, travel, training, events, and social activities, and through work-related communications including those enabled by information and communication technologies. This broad definition is particularly important in the Bangladesh context, where sexual harassment and gender-based violence occur not only within factory premises but during commutes to and from work, in accommodation provided or managed by employers, and through mobile phone and social media communications.

The implementation of Convention No. 190 in Bangladesh's domestic law will require significant legislative reform. The existing framework of the Bangladesh Labour Act's anti-harassment provisions, the BNWLA guidelines, and the criminal law provisions of the Prevention of Women and Children Repression Act need to be reviewed, consolidated, and strengthened to give effect to the Convention's requirements. A comprehensive implementation plan, developed in consultation with women workers' organizations, civil society groups, and the tripartite council, should be developed as a matter of urgency.

### 84.4 The Beijing Platform for Action and Sustainable Development Goal 8

Bangladesh's commitments under the Beijing Platform for Action, adopted at the Fourth World Conference on Women in 1995, and the United Nations Sustainable Development Goals (SDGs), adopted in 2015, provide additional normative frameworks for the assessment and reform of women workers' rights. SDG Goal 8, which commits to promoting sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all, includes specific targets relating to gender equality in employment, including the reduction of the gender pay gap, the promotion of women's labour force participation, and the elimination of child and forced labour.

Bangladesh has made significant progress toward some of the SDG 8 targets, particularly in relation to female labour force participation, which has increased substantially as a result of the expansion of the RMG sector and related industries. However, the quality of women's employment, assessed against the ILO's "decent work" framework of adequate earnings, security and safety, social protection, and workers' rights, remains far below the target, and the gap

between women's formal labour force participation rate and the decent work standard is one of the defining challenges of Bangladesh's development agenda.

The Fifth Generation UN Women's Strategic Plan (2022-2025) and its successor framework for the period 2026-2029, which has recently been released for consultation, includes Bangladesh's women workers' rights as a priority area for UN Women's programmatic engagement in the country, reflecting the recognition that the challenges of gender equality in employment in Bangladesh are both acute and directly connected to broader goals of sustainable and inclusive development.

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## CHAPTER EIGHTY-FIVE: THE REFORM AGENDA: TOWARDS A GENDER-RESPONSIVE LABOUR LAW FRAMEWORK FOR BANGLADESH

### 85.1 Principles for Gender-Responsive Reform

The analysis in this Part has identified a series of specific legal and institutional failures in Bangladesh's framework for protecting women workers' rights and promoting gender equality in employment. Before setting out specific reform proposals, it is important to articulate the principles that should guide a comprehensive, gender-responsive reform of Bangladesh's labour law framework.

The first principle is that of substantive equality, as opposed to merely formal equality. A gender-responsive labour law framework must go beyond prohibiting explicitly discriminatory treatment to address the structural conditions that generate women workers' disadvantage, including the gendered distribution of care responsibilities, the feminization of low-wage and precarious employment, and the social and institutional barriers to women's effective exercise of their labour rights. Substantive equality requires not just that the law treats women the same as men but that it actively addresses the conditions that prevent women from achieving genuinely equal outcomes.

The second principle is universality of coverage. The gender dimension of labour law reform requires that coverage be extended to all categories of workers, including domestic workers, agricultural workers, home-based workers, and other categories that have historically been excluded from formal labour law protection and in which women are disproportionately represented. Piecemeal extensions of coverage, such as the partial recognition of domestic workers in the 2025 Amendment, are insufficient substitutes for a genuinely universal approach.

The third principle is meaningful enforcement. Legal rights without effective enforcement are empty promises. A gender-responsive labour law framework must invest in the enforcement infrastructure necessary to give formal legal rights practical content, including a labour inspection system that is specifically trained and equipped to identify and address gender-based discrimination, sexual harassment, and violations of maternity protection, accessible and effective complaint mechanisms that are genuinely safe for women workers to use, and remedies that are proportionate to the harm caused and sufficient to deter future violations.

The fourth principle is worker voice and participation. Women workers must be active participants in the processes through which their rights are defined, enforced, and reformed, not merely passive beneficiaries of protections defined by others. This requires genuine support for women's participation in trade union organizing and leadership, the development of women's worker organizations and advocacy groups, and the inclusion of women workers and their representatives in tripartite consultations on labour policy.

The fifth principle is intersectionality awareness. A gender-responsive labour law reform agenda must attend to the ways in which gender intersects with class, ethnicity, religion, age, disability, and other axes of social difference to produce particular patterns of disadvantage, and must design interventions that are sensitive to these intersectional dimensions rather than treating "women workers" as an undifferentiated category.

### 85.2 Specific Reform Proposals: Maternity Protection

The reform of maternity protection law in Bangladesh should proceed along several interconnected lines, building on the advances made by the 2025 Amendment while addressing the significant gaps that remain.

The immediate legislative priority is the abolition of the two-child restriction on maternity benefit eligibility. This discriminatory provision, which has been consistently identified as a violation of CEDAW and a barrier to gender equality in employment, should be repealed without any substitute restriction based on reproductive history. The financial cost of this reform is modest relative to its symbolic and practical importance, and there is no credible justification for retaining a restriction that explicitly penalizes women for their reproductive choices and that is directly inconsistent with Bangladesh's constitutional and international legal obligations.

Bangladesh should undertake the ratification of ILO Convention No. 183 (Maternity Protection Convention, 2000), which would create stronger and more specifically enforceable international obligations in the maternity protection field. The technical requirements of ratification are largely met by the existing framework, as amended by the 2025 Ordinance, with the exception of the two-child restriction and the issue of social insurance financing. The ratification process should be used as an opportunity for a comprehensive review of the maternity protection framework against the Convention's standards.

The social insurance financing of maternity benefits should be developed as a medium-term priority. The pilot Employment Injury Scheme, which has established the institutional infrastructure for social insurance financing in the RMG sector with ILO and GIZ support, provides a template for the development of a social insurance mechanism for maternity benefits. A phased approach, beginning with the large-scale formal sector and progressively extending to cover informal workers, would be consistent with the approach taken to the Employment Injury Scheme and would allow for the gradual development of the institutional and administrative capacity necessary for effective social insurance management.

The qualifying service requirement for maternity benefit eligibility should be reduced from six months to three months, bringing the Bangladesh framework into closer alignment with

international standards and reducing the practical barriers to access for workers in sectors with high labour turnover including the garments industry. The requirement of continuous service should be modified to provide that service is continuous unless there has been a break of more than four weeks, preventing employers from manufacturing gaps in service to defeat maternity benefit entitlements.

Parental leave provisions should be introduced, enabling fathers to take paid leave following the birth of a child. The introduction of parental leave would serve several important purposes: it would recognize men's role in childcare and help to reduce the asymmetric distribution of care responsibilities that is a major driver of women's labour market disadvantage; it would reduce the employer's financial incentive to discriminate against women workers specifically, since the cost of leave following childbirth would not fall exclusively on the female worker; and it would contribute to the cultural shift in attitudes toward care work that is necessary for genuine gender equality in the labour market.

### 85.3 Specific Reform Proposals: Gender Equality and Anti-Discrimination

The reform of gender equality and anti-discrimination provisions in Bangladesh's labour law should address both the substantive content of the law and the institutional mechanisms for its enforcement.

A genuine equal pay for work of equal value framework should be developed, including the establishment of a National Job Evaluation Commission with the mandate to develop and administer objective job evaluation methodologies and to investigate equal pay complaints. The existing statutory provision on equal pay for work of equal value in Section 345A of the Bangladesh Labour Act is meaningless without the institutional infrastructure to give it practical content, and the development of this infrastructure is a necessary condition for the provision's effectiveness.

An independent Gender Equality Unit should be established within the Department of Labour, staffed with specialists in gender equality and anti-discrimination law and equipped with the mandate and resources to conduct systematic monitoring of compliance with gender equality provisions, to investigate complaints of gender discrimination, to produce annual reports on the state of gender equality in employment, and to develop and deliver gender sensitivity training for labour inspectors, Labour Court judges, and complaint committee members.

The complaint committee system for addressing sexual harassment should be fundamentally reformed to address the identified conflicts of interest and accessibility barriers. Consideration should be given to the development of sector-level rather than enterprise-level complaint mechanisms, particularly for the garments sector, that would provide workers with a genuinely independent and accessible forum for raising harassment complaints. The model of the sectoral sexual harassment dispute resolution mechanisms established in some Canadian provinces and Australian states provides useful comparative experience.

The protection of pregnant workers against dismissal should be strengthened by adopting an automatic unfairness doctrine modeled on the UK Employment Rights Act framework, under

which dismissal of a pregnant worker is automatically unfair unless the employer demonstrates that the grounds for dismissal were wholly unrelated to the pregnancy and would have applied equally to a non-pregnant worker. This reversal of the burden of proof is essential to make the protection against pregnancy discrimination genuinely effective.

### 85.4 Specific Reform Proposals: Domestic Workers

The partial recognition of domestic workers in the 2025 Amendment should be extended to full coverage under the Bangladesh Labour Act within a defined timeframe. A phased approach, bringing domestic workers under the minimum wage provisions in the first phase, the working hours and rest provisions in the second phase, and the full range of leave and social security provisions in the third phase, would allow time for the development of the administrative and enforcement capacity necessary for effective implementation while committing to a clear legislative trajectory.

A specific legislative framework for domestic workers should be developed in parallel with the extension of general labour law coverage. This framework should address the specific circumstances of domestic work, including the live-in arrangement, the intimacy of the employment relationship, and the particular vulnerability of child domestic workers. The framework should be developed in direct consultation with domestic worker organizations and civil society groups working with domestic workers, and should draw on the ILO's guidance on implementing Convention No. 189 in developing country contexts.

Bangladesh should ratify ILO Convention No. 189, which would create binding international legal obligations to provide domestic workers with working conditions not less favourable than those provided to workers generally and would require systematic monitoring of compliance with these obligations by the ILO supervisory bodies.

### 85.5 Specific Reform Proposals: Women Workers in Informal Employment

The development of a comprehensive legal framework for informal economy workers, including agricultural workers, home-based workers, and other non-standard workers, is one of the most important and most challenging tasks of labour law reform in Bangladesh. The current exclusion of these workers from formal labour law protection, which affects the majority of the Bangladeshi workforce and the majority of women workers, represents the most fundamental structural gap in the country's labour law system.

A dedicated law for home-based workers should be enacted, drawing on the experience of Pakistan's Home Based Workers Act, 2018, and India's proposed national policy on home-based workers. The law should provide home-based workers with minimum wage protection, occupational safety and health standards adapted to the home-based work context, social security coverage, and the right to organize and bargain collectively. The contracting-out arrangements through which home-based workers receive work should be regulated to ensure that contractors assume legal responsibility for compliance with labour standards, rather than treating home-based workers as independent contractors without rights.

A national agricultural labour policy should be developed, leading toward the enactment of specific agricultural labour legislation that extends minimum wage coverage, occupational safety and health protection, and social security to agricultural workers. The policy should specifically address the situation of women agricultural workers, recognizing their central role in Bangladesh's food production system and the specific risks and vulnerabilities they face.

### 85.6 Institutional Reform: A Gender-Responsive Labour Administration

The institutional infrastructure of labour administration in Bangladesh must be reformed to enable it to effectively implement a gender-responsive labour law framework. The current labour inspection system, which is chronically under-resourced and lacks specific expertise in gender equality and women's rights, is not capable of effectively monitoring and enforcing the gender-specific provisions of the Bangladesh Labour Act.

A specific programme for gender sensitization and capacity building in the labour inspection system should be developed, including training on identifying and investigating gender discrimination, sexual harassment, and maternity rights violations, and on the specific vulnerabilities of women workers in different sectors. Female labour inspectors should be recruited and deployed specifically to inspect sectors with predominantly female workforces, including the garments sector and domestic service, where male inspectors may face both practical and cultural barriers to effective inspection.

The Labour Courts and the ADR Authority established by the 2025 Ordinance should be provided with gender sensitivity training and should develop specific procedural guidelines for handling cases involving sexual harassment, pregnancy discrimination, and other forms of gender-based discrimination in employment. Legal aid for women workers bringing gender equality claims should be provided as a matter of right, recognizing that the power imbalance between employers and individual workers is particularly acute in gender discrimination cases where the worker challenges conduct that employers frequently treat as normal and acceptable.

A specific reporting mechanism for gender equality in employment should be established, requiring employers above a specified size threshold to report annually on the gender composition of their workforce at different levels, the gender pay gap in their establishments, the number of sexual harassment complaints received and their outcomes, and their maternity benefit payment record. This reporting requirement would create a body of systematic data on gender equality in employment that is currently largely absent, and would create accountability mechanisms for employers who are not meeting their legal obligations.

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## CHAPTER EIGHTY-SIX: INTERSECTIONALITY, CARE WORK, AND THE FUTURE OF WOMEN'S LABOUR RIGHTS IN BANGLADESH

### 86.1 The Care Economy and the Law: Towards Recognition and Redistribution

One of the most fundamental challenges for a gender-responsive labour law framework is the treatment of care work, both paid and unpaid. Care work, including childcare, elder care, the care of persons with disabilities, and household management, is performed predominantly by women, is economically essential to the functioning of society and the economy, and is simultaneously systematically undervalued in both the market and the law. The feminist political economy of care, developed by scholars including Joan Tronto, Nancy Folbre, and Diane Elson, identifies the undervaluation of care as a central mechanism of gender inequality that requires both recognition, the acknowledgment of care as work of genuine economic and social value, and redistribution, the rebalancing of care responsibilities between women and men and between private households and the state.

In Bangladesh, the care economy is particularly significant given the disproportionate burden of care that women carry in a context of limited public provision of childcare, elder care, and disability support services. The absence of universal public childcare means that women who wish to maintain employment after childbirth must either rely on informal family support networks, pay for private childcare from their wages, or withdraw from the workforce entirely. The legal framework's inadequate response to this challenge, discussed in Chapter Seventy-Nine in the context of work-life balance, is a major driver of women's economic disadvantage.

The theoretical literature on the care economy and law has developed significantly in recent years, with important contributions from scholars including Virginia Held, who has developed a "care ethics" as a philosophical framework for rethinking the relationship between law, work, and human interdependence. Held argues that the liberal tradition in legal and political philosophy, with its emphasis on individual autonomy and rational self-interest, systematically neglects the relational and interdependent character of human life, and that a legal framework informed by care ethics would recognize and support the social infrastructure of care on which all economic activity ultimately depends.

The application of care ethics to labour law reform in Bangladesh would suggest that the reform agenda must address not only the rights of women workers in paid employment but the social infrastructure of care that determines whether women can participate in paid employment without bearing an impossibly disproportionate burden. This means universal public childcare, elder care services, adequate social security for primary caregivers, and parental leave arrangements that genuinely enable fathers to participate in childcare, not as a matter of individual employer generosity but as a social right supported by public financing.

### 86.2 Technology, Platform Work, and the New Forms of Women's Work

The emergence of platform-based work and the gig economy as significant new forms of employment creates new challenges for women workers' rights that are only beginning to be addressed by legal frameworks globally and have not yet been adequately addressed in Bangladesh. Platform work, in which workers are engaged through digital platforms as nominally independent contractors to perform tasks on demand, has grown rapidly in Bangladesh's urban economy, encompassing delivery riders, domestic cleaning and home care services organized through apps, tutoring and educational services, and various forms of freelance knowledge work.

The gender dimensions of platform work in Bangladesh are complex and in some respects contradictory. On one hand, platform work in domestic cleaning and home care services provides income opportunities for women who might otherwise have difficulty accessing formal sector employment because of their care responsibilities or because of social or family constraints on their mobility. The ability to work on a flexible schedule that can be adapted to childcare responsibilities makes platform work attractive to some categories of women workers. On the other hand, the classification of platform workers as independent contractors rather than employees means that they fall outside the scope of Bangladesh's labour law protections, including minimum wages, maternity protection, and the right to organize, and they are therefore vulnerable to precisely the forms of exploitation from which labour law is supposed to protect workers.

The international literature on platform work and gender, including Valerio De Stefano and Antonio Aloisi's important work published in their 2022 book Your Boss Is an Algorithm and the subsequent literature on platform work governance, identifies the reclassification of platform workers as employees or worker-like entities with statutory rights as a key policy priority for addressing the labour rights deficits of the platform economy. In Bangladesh, the Labour Reform Commission's April 2025 report addressed platform work as an emerging challenge and recommended the development of specific legislative provisions covering platform workers, but the 2025 Ordinance and 2026 Amendment Bill did not implement these recommendations.

The gender-specific reform agenda for platform work in Bangladesh must address the specific risks facing women platform workers, including the particular forms of sexual harassment and gender-based violence that arise in the context of platform-based domestic and care services, where workers typically work in private households without effective access to complaint mechanisms. The International Accord model of binding multi-stakeholder agreements that create obligations on platform companies to ensure minimum standards for the workers in their supply chains could potentially be adapted to address gender-specific risks in platform-based domestic work.

### 86.3 Climate Change, Disaster Risk, and Women Workers

Bangladesh is one of the countries most severely affected by the impacts of climate change, including increased frequency and intensity of flooding, cyclones, and other extreme weather events, rising sea levels, salinity intrusion into agricultural land, and the displacement of rural communities from climate-affected areas. These climate impacts have specific and disproportionate consequences for women workers, particularly in agriculture, aquaculture, and coastal industries.

Climate-related displacement from rural areas accelerates urbanization and increases the supply of female migrant workers available for employment in the urban garments sector, creating downward pressure on wages and working conditions. The connection between climate vulnerability and labour rights vulnerability is particularly acute for women workers in the coastal districts of Bangladesh, who are displaced from traditional livelihoods by salinity intrusion and flooding and who may find themselves in the most precarious forms of urban employment as a result.

The development of a climate-responsive labour law framework that addresses the specific vulnerabilities of climate-displaced women workers is an important emerging priority for Bangladesh's reform agenda. This includes provisions for the protection of women workers during extreme weather events, including requirements for factory closures and safe evacuation, adequate social security coverage for workers who are temporarily unable to work due to climate-related disruption, and specific protections for women workers in climate-vulnerable sectors including agriculture and aquaculture.

### 86.4 The July 2024 Revolution and Its Implications for Women Workers' Rights

The July 2024 revolution, analyzed in detail in Part Eight of this work as a transformative political event for the collective labour rights agenda, also has important specific implications for the women workers' rights agenda. The student-led uprising that removed Sheikh Hasina's government involved significant participation by women, including women garment workers who participated in the street protests that created the political pressure for government change. The role of women workers in the revolution, and the labor reform agenda that emerged from the post-revolutionary political settlement, are directly connected dimensions of the same political transformation.

The interim government of Professor Yunus, which came to power in August 2024, included a labour reform agenda that was in some respects more attentive to women workers' specific concerns than the reform agenda of previous governments, reflecting both the changed political climate and the specific attention given to women workers' issues by the Labour Reform Commission's April 2025 report. The Commission's membership included representation from women workers' organizations and feminist civil society groups, which contributed to a more gender-aware analytical framework than had characterized previous reform processes.

However, the translation of gender-aware analysis in the Commission's report into concrete legislative reform has been incomplete. The 2025 Ordinance and 2026 Amendment Bill addressed some of the gender-specific issues identified in the Commission's report, including the partial recognition of domestic workers, the extension of maternity leave, and the strengthened provisions on sexual harassment. But many of the Commission's most ambitious recommendations on gender equality in employment, including the abolition of the two-child restriction, the extension of maternity protection to domestic and agricultural workers, and the development of social insurance financing for maternity benefits, were not implemented. This gap between the Commission's recommendations and the legislative outcome reflects the continued influence of employer interests and the bureaucratic inertia of a labour administration that has not yet fully absorbed the implications of a genuine gender equality agenda.

The post-2026 period, in which Bangladesh transitions to a democratically elected government while attempting to implement and extend the reforms initiated by the interim government, presents both opportunities and risks for the women workers' rights agenda. The opportunity lies in the stronger democratic accountability that an elected government, responsive to the votes and demands of women citizens including women workers, may be more willing to pursue than a government appointed through a non-electoral process. The risk lies in the potential for the same clientelistic relationships between elected governments and employer associations that

characterized the pre-revolutionary political economy to reassert themselves, reversing or stalling the reform momentum generated by the revolutionary period.

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## CHAPTER EIGHTY-SEVEN: SYNTHESIS AND CONCLUSIONS: TOWARDS A GENUINE FEMINIST TRANSFORMATION OF BANGLADESH'S LABOUR LAW

### 87.1 The Structural Diagnosis

The analysis in this Part has generated a structural diagnosis of Bangladesh's framework for women workers' rights that parallels, and is directly connected to, the structural diagnosis of collective labour rights developed in Part Eight. The framework for women workers' rights in Bangladesh has been designed and operated, for most of its history, not as a genuine guarantee of equality and dignity for women workers but as a system of formal provisions that acknowledges women's labour market participation while doing little to challenge the structural conditions that make that participation consistently disadvantageous.

The structural features that generate this diagnosis are multiple and interconnected. The scope of formal labour law coverage remains deeply incomplete, excluding the majority of women workers in domestic service, agriculture, and the informal economy from virtually all substantive legal protection. The formal protections that do exist, including maternity protection, equal pay for work of equal value, and anti-sexual harassment provisions, are chronically under-enforced because of the inadequacy of the institutional infrastructure of labour administration, the weakness of workers' collective power to demand enforcement, and the social norms that normalize discrimination and harassment as features of the employment landscape. The financing of maternity benefits through individual employer liability creates incentives to discriminate against pregnant workers that formal legal prohibitions on discrimination cannot adequately counteract. The care responsibilities that disproportionately fall on women are treated as a private matter for individual families to manage rather than as a social challenge requiring collective and public responses. And the legal framework's design continues to reflect, in multiple ways, the assumption that the "normal" worker is male and that women's labour is secondary, supplementary, and less deserving of protection.

### 87.2 The Adequacy of the 2025-2026 Reforms

The Bangladesh Labour (Amendment) Ordinance, 2025, and the Bangladesh Labour (Amendment) Act, 2026, represent genuine and meaningful advances in the formal legal framework for women workers' rights. The extension of maternity leave from one hundred and twelve to one hundred and twenty days, the partial recognition of domestic workers, the strengthened provisions on sexual harassment and harassment prevention, the new prohibition on blacklisting, and the establishment of the Alternative Dispute Resolution Authority all represent improvements on the previous framework.

But the assessment must be candid about the limitations. The two-child restriction on maternity benefits, arguably the most straightforwardly discriminatory provision in the Act, was retained in

the face of consistent calls for its abolition from CEDAW, the ILO, and domestic advocates. The extension of coverage to domestic workers was explicitly partial, leaving them without minimum wage protection, maternity benefit, and most of the other protections that most directly address their vulnerability. The modification of the maternity benefit calculation method may reduce the actual financial value of maternity benefits for workers who regularly earn supplementary payments above the basic wage. And the fundamental structural challenges, including the social insurance financing of maternity benefits, the development of a comprehensive work-life balance framework, and the extension of effective coverage to agricultural and informal economy workers, were not addressed.

The assessment of the 2025-2026 reforms from a feminist jurisprudential perspective reveals a pattern that is familiar from the broader literature on gender and law reform: progressive language in the preamble and formal provisions, reflecting genuine commitments by at least some of those involved in the reform process, combined with technical and institutional provisions that reproduce or even entrench existing inequalities. The feminist insight that formal legal change without structural transformation of the power relations that generate inequality is insufficient is amply illustrated by the 2025-2026 reform experience.

### 87.3 The Theoretical Framework for Transformation

The theoretical framework for genuine feminist transformation of Bangladesh's labour law, as this analysis has attempted to articulate, draws on multiple intellectual traditions without reducing to any single one. Liberal feminism contributes the insistence on formal legal equality and the removal of discriminatory barriers. Substantive equality theory contributes the recognition that formal equality without structural transformation is insufficient. Socialist feminism contributes the analysis of the intersection of gender and class in organizing women's disadvantage. Critical legal theory contributes the analysis of the ideological functions of formal legal provisions. Postcolonial feminism contributes the insistence on situating the analysis within the specific history and social formation of Bangladesh. The capabilities approach contributes a rich normative account of what genuine gender equality in employment would require.

The synthesis of these theoretical contributions suggests that genuine transformation requires three interconnected dimensions of change: normative change, transformation of the legal rules and standards that govern women workers' rights; institutional change, transformation of the organizations and processes through which those rules are enforced and through which workers claim their rights; and structural change, transformation of the broader social and economic conditions that generate women workers' disadvantage, including the distribution of care responsibilities, the valuation of women's work, and the power relations of the workplace.

The normative dimension of change is necessary but insufficient. The history of Bangladeshi labour law reform is full of instances in which normative improvements in formal law were not accompanied by institutional or structural changes, resulting in progressive provisions that remained unenforced and had little practical impact on workers' lives. The institutional dimension of change requires sustained investment in the administrative and adjudicative infrastructure of labour governance, including a gender-responsive labour inspection system, accessible and effective complaint mechanisms, and courts and tribunals capable of providing

timely justice. The structural dimension of change requires engagement with the political economy of Bangladesh's development model, including the relationship between gender equality in employment and the competitiveness of Bangladesh's export industries in global markets.

### 87.4 The Road Ahead: Implementing and Extending the Reform Agenda

The road ahead for women workers' rights in Bangladesh is both challenging and, in certain crucial respects, more promising than at any previous moment in the country's history. The political transformation of 2024 created a unique window of opportunity for reform, and the interim government used that window to advance an agenda that was more ambitious than any previous government had been willing to pursue. The task for the post-2026 democratic government is to sustain, implement, and extend that reform momentum.

The immediate priorities for implementation include the development of implementing regulations for the 2025 Ordinance's domestic worker provisions, the finalization of the implementing rules for the Child Daycare Centre Act, 2021, the development of an action plan for implementation of ILO Convention No. 190, and the establishment of the Gender Equality Unit within the Department of Labour. These are institutional priorities that do not require additional legislative action and that can be advanced through administrative measures.

The medium-term legislative priorities include the abolition of the two-child restriction on maternity benefit eligibility, the ratification of ILO Convention No. 183 and Convention No. 189, the development of a dedicated legal framework for home-based workers, and the introduction of parental leave provisions. These require legislative action and will face political opposition from employer interests, but the political case for each of them is strong and should be made systematically in the consultative processes that precede legislative reform.

The longer-term structural priorities include the development of social insurance financing for maternity benefits, the extension of formal labour law coverage to agricultural workers, the development of a genuine comparable worth framework for equal pay, and the creation of a comprehensive public childcare system. These are the most ambitious components of the reform agenda and the ones most likely to face the strongest political resistance. But they are also the reforms that will make the greatest practical difference to the lives of Bangladesh's women workers, and the philosophical, jurisprudential, and practical case for them is compelling.

The ultimate measure of Bangladesh's labour law reform will not be in the text of legislation or the ratification of conventions. It will be in the lives of the women who work in the garment factories of Gazipur, in the households of Gulshan and Banani, in the rice fields of Rangpur and Rajshahi, and in the tea gardens of Sylhet. When those women can work without fear of violence or harassment, can assert their rights without fear of dismissal, can take the maternity leave to which they are entitled and return to their jobs without penalty, can organize with their fellow workers to negotiate better conditions, and can participate as genuine equals in the economic and social life of their country, Bangladesh will have made good on the constitutional promise of equality and dignity for all its citizens. This is the vision that animates the reform agenda this

Part has developed, and it is a vision that demands not just legal reform but a fundamental rethinking of the relationship between law, work, gender, and power in Bangladeshi society.

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*End of Part Nine*

*Part Ten of this work will examine the law of occupational safety and health in Bangladesh, analyzing the regulatory framework for workplace safety from its colonial origins through the transformative reforms catalyzed by the Rana Plaza disaster of 2013 and the subsequent development of the International Accord for Health and Safety in the Textile and Garment Industry. Part Ten will situate this doctrinal analysis within the framework of the recently ratified ILO Conventions Nos. 155, 187, and 190, examine the philosophy of risk regulation and its application to the specific conditions of Bangladesh's industrial economy, and develop a comprehensive reform agenda that addresses both the statutory framework and the institutional infrastructure for occupational safety and health governance. The analysis of women workers' rights in Part Nine is directly connected to the occupational safety and health analysis of Part Ten: as this Part has shown, women workers face specific and disproportionate occupational health risks including pregnancy-related risks, reproductive hazards, ergonomic risks from specific work patterns, and the particular risks of gender-based violence in the workplace that are recognized and addressed by ILO Convention No. 190. Part Ten will address these gender-specific occupational health dimensions explicitly, building on the feminist jurisprudential framework developed in this Part.*

## PART TEN: OCCUPATIONAL SAFETY AND HEALTH LAW IN BANGLADESH: PHILOSOPHY, DOCTRINE, CATASTROPHE, AND REFORM

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## PREFATORY NOTE TO PART TEN

Part Nine of this work examined the rights of women workers in Bangladesh through a sustained feminist jurisprudential lens, tracing the philosophical foundations, doctrinal architecture, and reform imperatives that define gender equality in the world of work. As that Part observed in its concluding pages, the question of women workers' rights is intimately connected to the broader question of occupational safety and health, because women workers in Bangladesh face not only the general hazards of industrial production but also a distinctive set of gender-specific risks that include pregnancy-related hazards, reproductive toxicology, the heightened vulnerability of harassment and violence in the workplace, and the structural invisibility that renders women's occupational health concerns peripheral to mainstream regulatory thinking.

Part Ten takes up the full landscape of occupational safety and health law in Bangladesh as its subject. It is a subject that demands treatment of both the greatest analytical seriousness and the deepest moral urgency, because the history of occupational safety and health regulation in Bangladesh is, more than almost any other chapter of the country's legal history, written in human blood. The collapse of the Rana Plaza building in Dhaka on 24 April 2013, which killed 1,134 garment workers and injured more than 2,500 others, was not merely a workplace accident; it was a juridical event, a moment that revealed, with shocking clarity, the catastrophic consequences of regulatory failure, the complicity of the state in protecting capital over workers, and the deep structural violence embedded in the legal architecture governing occupational safety in Bangladesh. It was also, paradoxically, a moment that catalyzed a process of legal and institutional transformation more far-reaching than any previous reform initiative in the country's history.

This Part analyses the occupational safety and health law of Bangladesh across its full temporal and thematic range. It begins with the philosophical foundations of OSH regulation, examining the competing theories of risk, responsibility, and prevention that have shaped different regulatory models around the world. It then traces the historical development of OSH law in Bangladesh from the colonial period through the Pakistan era, the early independence period, the transformative post-Rana Plaza decade, and the extraordinary developments of 2024 and 2025 that have brought Bangladesh to a new threshold in its relationship with international OSH standards. It examines the statutory framework in detail, analyzes the institutional architecture of enforcement, and confronts the profound gap between formal law and lived reality that has characterized OSH regulation in Bangladesh throughout its history. It situates the doctrinal analysis within a rich theoretical framework that draws on the philosophy of risk, republican political theory, the capabilities approach, postcolonial legal theory, and the emerging discipline of global labour governance. And it develops a comprehensive, philosophically grounded reform agenda that addresses not only the statutory framework but the institutional, cultural, and political economy dimensions of the challenge.

The analysis in this Part draws directly on the historic developments of October and November 2025, when Bangladesh became the first country in South Asia to ratify ILO Conventions Nos. 155, 187, and 190 simultaneously, and the subsequent promulgation of the Bangladesh Labour (Amendment) Ordinance, 2025, which represented the most comprehensive single legislative intervention in the history of Bangladesh's OSH framework. These developments are analysed

not merely as legislative events but as moments in a longer political and jurisprudential story about the relationship between law, power, and the human body in the conditions of global capitalist production.

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## CHAPTER SIXTY-FIVE: THE PHILOSOPHY OF OCCUPATIONAL SAFETY AND HEALTH: RISK, RESPONSIBILITY, AND THE HUMAN BODY AT WORK

### 65.1 Framing the Problem: What is Occupational Safety and Health Law For?

The question of what occupational safety and health law is for appears, at first encounter, to have an obvious answer: it is designed to prevent workers from being harmed, killed, or made ill by the conditions of their work. This answer is not wrong, but it is radically incomplete. The question of what OSH law is for cannot be separated from deeper questions about the nature of the employment relationship, the distribution of responsibility for risk, the meaning of consent in conditions of economic compulsion, the relationship between human dignity and bodily integrity, and the structure of political authority in market societies. These philosophical questions are not merely academic; they determine, in a profoundly practical way, what kind of legal framework emerges and what work that framework does in the world.

The philosophical literature on occupational safety and health has grown considerably in recent decades, drawing on contributions from political philosophy, moral philosophy, the philosophy of risk, and legal theory. The key debates in this literature concern the following sets of questions: Who bears the primary duty of care for worker safety, the employer, the state, or the individual worker? How should the law respond to situations in which workers appear voluntarily to accept dangerous working conditions? What is the appropriate role of the criminal law, as opposed to civil liability and administrative regulation, in addressing workplace harm? How should the law handle scientific uncertainty about the causes of occupational disease? What do workers deserve by way of compensation when they are injured or killed at work, and what is the philosophical basis of that entitlement? These questions have received very different answers in different legal traditions, and the answers that have been given in Bangladesh reflect the particular combination of colonial inheritance, postcolonial state-building, and global economic integration that has shaped the country's legal system.

### 65.2 The Philosophy of Risk and Its Application to Workplace Safety

The concept of risk occupies a central position in the philosophy of occupational safety and health. Risk, in its technical sense, is a function of the probability of an adverse event and the magnitude of its consequences. But risk is not merely a technical concept; it is also a social and political construct, shaped by power relations, cultural assumptions, and economic interests. The sociology of risk, developed by scholars such as Ulrich Beck, Anthony Giddens, and Mary Douglas, has shown that the identification, assessment, and distribution of risk is never a neutral technical exercise but is always embedded in social relations and inflected by considerations of power and interest.

Ulrich Beck's concept of the "risk society," developed in his influential 1986 work of that name and elaborated in subsequent writings, provides a powerful framework for understanding the transformation of risk in the context of modern industrial production. Beck argued that modern industrial societies have entered a phase in which the production of wealth is systematically accompanied by the production of risk, and in which the distribution of the risks of industrial production has become as significant a political question as the distribution of the goods of production. In the classical industrial society, Beck argued, the central political conflict was over the distribution of wealth; in the risk society, it is over the distribution of risk, including the risks of industrial accident, environmental contamination, and occupational disease. The Rana Plaza disaster illustrates Beck's thesis with brutal precision: the risks of garment production in Bangladesh were systematically distributed across a global supply chain in which the benefits of cheap production were enjoyed by consumers and shareholders in the Global North while the risks of building collapse, fire, and structural failure were borne by workers in the Global South.

The philosophy of risk also requires attention to the distinction between acceptable and unacceptable risk, and to the question of who has the authority to make this determination. The mainstream economic approach, associated with the welfare economics tradition and with cost-benefit analysis, holds that a risk is acceptable if and only if the expected benefits of the activity that generates the risk outweigh its expected costs, where costs include the expected harm to those exposed to the risk. This approach, while analytically tractable, is philosophically controversial on several grounds. First, it requires commensuration of costs and benefits that may be genuinely incommensurable: how does one weigh the economic benefits of cheap garment production against the lives of the workers who produce it? Second, the welfare economics approach tends to assume that the risks voluntarily accepted by workers through the employment contract are legitimate, because the worker's agreement to work in hazardous conditions demonstrates that the worker values the wage more than the risk. This assumption of voluntary acceptance has been subjected to devastating criticism by philosophers of risk, most notably by Elizabeth Anderson, whose work on the ethics of risk challenges the very idea that economic necessity constitutes genuine consent to danger.

Anderson's argument, developed in her influential 1999 article "What is the Point of Equality?" and in subsequent work on the ethics of risk, is that the consent of workers to hazardous working conditions cannot be treated as genuine consent in circumstances where the refusal of those conditions would mean starvation or destitution. A worker who accepts a job in a structurally unsafe factory because the alternative is unemployment and poverty has not, in any meaningful philosophical sense, consented to the risk of building collapse; the worker has simply been compelled, by economic necessity, to trade safety for survival. Anderson's argument converges with the republican political philosophical tradition, discussed in Part One of this work, which identifies domination as the fundamental wrong of the employment relationship: the worker who accepts hazardous conditions to avoid destitution is, in republican terms, paradigmatically dominated, subject to the arbitrary power of an employer who can demand acceptance of danger as the price of employment.

The philosophical rejection of the voluntariness assumption has profound implications for the design of OSH regulation. If workers cannot meaningfully consent to occupational risk in conditions of economic compulsion, then the law cannot leave the determination of acceptable

risk to the individual bargaining process. The state must intervene to set minimum standards of safety that cannot be bargained away, not because individual workers are incapable of making their own decisions, but because the structural conditions of the labour market make genuine choice impossible. This is the fundamental philosophical argument for mandatory OSH standards, as opposed to the contractualist or market approach that would leave safety standards to be determined by the terms of individual employment contracts or by market competition among employers.

### 65.3 Employer Responsibility and the Duty of Care: From Fault to Strict Liability

The question of who bears primary responsibility for occupational safety has been answered differently in different legal traditions and at different historical moments. The earliest common law approach treated workplace injury as a matter of individual fault: an employer was liable for a worker's injury only if the employer had been negligent, and the worker bore the burden of proving that negligence in court. This approach was reinforced by the fellow servant rule, which held that an employer was not liable for injuries caused by the negligence of a fellow employee, and by the doctrine of voluntary assumption of risk, which held that a worker who knowingly accepted employment in hazardous conditions had no legal claim when those hazards materialized. These doctrines effectively insulated employers from most liability for workplace injuries and left injured workers without legal remedy in the vast majority of cases.

The injustice of this common law regime was evident even to contemporaries, and the late nineteenth and early twentieth centuries saw a progressive erosion of these doctrines and their replacement by statutory workers' compensation schemes that provided compensation for workplace injury without requiring proof of employer fault. The workers' compensation revolution, which swept through most industrial countries in the early twentieth century, represented a fundamental shift in the philosophy of occupational injury: from a fault-based system premised on individual responsibility to a no-fault system premised on collective responsibility for the inevitable injuries of industrial production. The philosophical justification for this shift drew on several arguments: the practical impossibility of proving fault in many cases of industrial injury, the unequal bargaining positions of employer and worker in litigation, and the systemic nature of occupational risk, which is a product of industrial organization rather than individual negligence.

The development of administrative regulation of workplace safety, as opposed to judicial enforcement of tort liability, represented a further evolution in the philosophy of OSH law. Administrative regulation places primary responsibility for safety on the employer through a system of prospective standards, inspections, and enforcement, rather than through retrospective liability for individual injuries. The philosophical justification for administrative regulation draws on the preventive imperative: it is better to prevent workplace injuries before they occur than to compensate for them after the fact, and a system of prospective standards is better suited to prevention than a system of retrospective liability, which gives employers incentives to minimize the costs of injury rather than to eliminate the hazard that causes it.

The most sophisticated philosophical account of the relationship between prevention and compensation in OSH regulation is that associated with the systems-based approach to

workplace safety, which has become the dominant paradigm in contemporary OSH regulation globally and which underlies ILO Conventions Nos. 155 and 187. The systems-based approach treats workplace safety not as a matter of individual responsibility or compliance with specific technical standards but as an emergent property of the entire system of production, including the design of work processes, the management of organizations, the training and supervision of workers, the design and maintenance of equipment, and the physical characteristics of the workplace. This approach, drawing on the organisational accident theory developed by James Reason, the safety culture framework associated with Edgar Schein, and the high-reliability organisation literature developed by Karl Weick and Kathleen Sutcliffe, holds that workplace accidents are rarely the result of a single cause but are typically the product of a complex interaction of latent organisational failures and active errors that together create the conditions for catastrophe.

The Rana Plaza disaster is a textbook illustration of the organisational accident model. The collapse of the building was not the result of a single cause, whether the negligence of an individual employee, a defective structural component, or an act of God; it was the product of a system of production characterized by pervasive structural failures at every level, from the foundational illegality of the building itself (constructed without proper approval, on unstable ground, with additional floors added without structural assessment) through the management culture that suppressed workers' safety concerns and ordered them to return to work despite visible cracks in the structure, to the global supply chain governance that created overwhelming commercial pressures for cheap, rapid production with no credible mechanism of safety accountability. Understanding Rana Plaza as a systems failure rather than an individual accident has profound implications for the design of OSH regulation: it implies that effective regulation must engage with the entire system of production, including the governance structures of global supply chains, and not merely with individual employer compliance with technical standards.

### 65.4 The Criminal Law and Occupational Safety: Accountability, Deterrence, and Justice

The relationship between the criminal law and occupational safety and health is one of the most contested issues in OSH jurisprudence. The central question is whether the killing or serious injuring of workers through unsafe working conditions should be treated as a criminal matter, and if so, what form that criminal liability should take and how it should be enforced. This question has both principled and pragmatic dimensions.

The principled argument for criminalizing serious OSH violations is grounded in the retributive theory of punishment and in the expressive theory of law. If an employer knowingly maintains working conditions that create a serious and foreseeable risk of death or serious injury to workers, and a worker dies or is seriously injured as a result, the employer has done something that is morally equivalent, or at least closely analogous, to criminal recklessness or manslaughter. The fact that the harm was inflicted in the course of commercial activity, rather than through a discrete act of interpersonal violence, does not reduce the moral culpability of the employer; if anything, the commercial motive for accepting risk at workers' expense compounds the wrong. The failure to treat such conduct as criminal sends a message that workers' lives are less valuable than commercial interests, and this message is itself a form of institutional injustice.

The pragmatic argument for criminal liability is instrumentalist: criminal sanctions, including imprisonment, are a more effective deterrent to OSH violations than civil penalties or administrative fines, because they impose costs on individual decision-makers that cannot be externalized onto the enterprise or its shareholders. The research literature on deterrence and OSH compliance, including the influential work of Cynthia Estlund, David Weil, and John Howe, suggests that criminal liability, when consistently enforced, has a significant deterrent effect on workplace safety violations, particularly at the level of senior management and directors who make decisions about safety investment. The problem is that criminal liability for workplace injury is rarely enforced consistently, in any jurisdiction, for a combination of institutional, evidentiary, and political reasons.

In Bangladesh, the criminal law dimension of OSH regulation has been almost entirely absent in practice. Despite the extraordinary scale of workplace death and injury in Bangladesh's industrial sector, criminal prosecutions of employers for workplace safety violations have been vanishingly rare, and convictions rarer still. The Rana Plaza case, in which criminal charges of negligence and culpable homicide were brought against the building owners, factory owners, and municipal authorities responsible for approving the building's construction, represents the most significant attempt to engage criminal law in the service of OSH accountability in Bangladesh's history. But as of the date of writing, the prosecution has been slow, procedurally complex, and largely unsuccessful in securing meaningful accountability for the deaths of more than a thousand workers. This failure is not merely a matter of prosecutorial weakness; it reflects deeper structural problems with Bangladesh's criminal justice system, including inadequate investigative capacity, corruption, and the political connections of powerful employers.

The reform of criminal liability for OSH violations in Bangladesh requires not merely strengthening the provisions of the existing criminal law but creating the institutional infrastructure for effective criminal investigation and prosecution, including specialist investigative units within the Department of Inspection for Factories and Establishments (DIFE), mandatory reporting requirements for workplace deaths and serious injuries, and a prosecutorial framework that can navigate the complexities of corporate criminal liability.

### 65.5 Human Dignity, the Right to Safe Work, and OSH as a Human Rights Imperative

The reconceptualization of occupational safety and health as a dimension of human rights represents one of the most significant developments in OSH philosophy and jurisprudence in the twenty-first century. The International Labour Conference's recognition in 2022 of the fundamental right to a safe and healthy working environment, expressed through the elevation of ILO Conventions Nos. 155 and 187 to the status of fundamental conventions alongside the original core conventions, represents the institutional culmination of a long process of philosophical and legal development.

The philosophical argument for treating the right to safe work as a human right draws on several convergent lines of reasoning. The capabilities approach developed by Amartya Sen and Martha Nussbaum, which grounds human rights in the notion of genuinely human functioning and provides a framework for identifying the conditions necessary for human flourishing, treats bodily integrity as one of the most fundamental human capabilities. A person who is killed or

permanently disabled by preventable workplace injuries has had her most basic human capability, the capability of simply living and of having bodily integrity, destroyed by the conditions of her employment. The deprivation of this capability is a deprivation of human dignity in the most fundamental sense, and the obligation of the legal system to prevent such deprivation is as basic as the obligation to prevent other forms of fundamental rights violation.

Virginia Mantouvalou's work on workers' rights as human rights, discussed in Part One of this work, provides a particularly powerful account of the human rights grounding of OSH standards. Mantouvalou argues that the employment relationship, in which the worker submits to the direction and authority of the employer for the duration of the working day, is a relationship in which the employer has extraordinary power over the worker's person, including the worker's bodily integrity. The employer who directs a worker to perform tasks in conditions that the employer knows to be dangerous is exercising this power in a way that treats the worker as an instrument of production rather than as a person with inherent dignity and worth. This is precisely the kind of treatment that human rights law is designed to prohibit, and the obligation to maintain safe working conditions should be understood as a human rights obligation, not merely a regulatory one.

The European Court of Human Rights has, in recent years, increasingly recognized the connection between occupational safety and health and the rights guaranteed by the European Convention on Human Rights, particularly the right to life under Article 2 and the prohibition of inhuman and degrading treatment under Article 3. In cases such as Öneryildiz v. Turkey (2004) and Brincat and Others v. Malta (2014), the Court held that states have positive obligations under Article 2 to take practical measures to protect individuals from dangerous activities, including activities in the workplace. The Court's jurisprudence in this area has been increasingly influential in the development of OSH regulation globally, and it provides a doctrinal foundation for arguing that Bangladesh's obligation to protect workers from workplace hazards is a human rights obligation enforceable under international law.

In the South Asian context, the Supreme Courts of India and Pakistan have, in a series of landmark cases, recognised the constitutional right to life as encompassing the right to safe working conditions. The Indian Supreme Court's decisions in Consumer Education and Research Centre v. Union of India (1995), which held that the right to life under Article 21 of the Indian Constitution encompasses the right to health and to safe working conditions, and Occupational Health and Safety Association of Workers v. Union of India (2014), which addressed occupational health in the context of hazardous industries, provide important precedents for the development of constitutional OSH jurisprudence in Bangladesh. While the doctrinal frameworks of the Indian and Bangladeshi constitutions differ in significant ways, the Indian cases provide persuasive authority for the argument that Article 32 of the Bangladesh Constitution, which protects the right to personal liberty, and the Fundamental Principles of State Policy, which include provisions on just and favorable conditions of work, have a role in shaping the content and enforcement of OSH obligations.

# CHAPTER SIXTY-SIX: THE COLONIAL ORIGINS AND HISTORICAL DEVELOPMENT OF OSH LAW IN BANGLADESH

## 66.1 Colonial Labour Law and the Governance of Workplace Safety in Bengal

The colonial governance of workplace safety in Bengal was shaped by the same fundamental tension that characterized all colonial labour regulation: the tension between the economic interests of colonial capital, which demanded cheap and pliant labour with minimal regulatory overhead, and the humanitarian concerns of at least some metropolitan administrators and social reformers, who recognized that unlimited exploitation of industrial workers was both morally indefensible and politically dangerous.

The first systematic legislative attention to factory conditions in British India came with the Indian Factories Act of 1881, enacted primarily in response to lobbying by Lancashire textile interests concerned about competitive disadvantage from the unregulated factories of Bombay, and by humanitarian reformers appalled by the conditions, particularly for child workers, in the cotton mills of western India. The 1881 Act applied to factories using mechanical power and employing more than one hundred workers, and it imposed minimum requirements for weekly rest days, limitations on the working hours of children and women, and basic standards of cleanliness and ventilation. The Act was conspicuously weak in its enforcement provisions, providing for inspection by provincial governments rather than a specialized factory inspectorate, and it was almost entirely unenforced in Bengal.

The subsequent history of colonial factory legislation in India is a chronicle of incremental, grudging improvement driven by recurring industrial disasters, working-class agitation, and the political pressures of the emerging nationalist movement. The Indian Factories Acts of 1891 and 1911 extended coverage, tightened standards, and made modest improvements to enforcement, but always within limits set by the economic interests of the factory owners who constituted a powerful lobby in the colonial legislature. The Bengal provincial administration was particularly resistant to effective factory regulation, partly because of the influence of British textile interests in Bengal's jute industry, which was the dominant industrial sector of the region and which operated under conditions of extraordinary exploitation that any serious safety regulation would have disrupted.

The Mines Act of 1923 introduced a separate regulatory regime for underground mining, reflecting the recognition that mining posed occupational hazards that were qualitatively different from those of surface manufacturing and that required specialized regulatory attention. The Act required mine owners to maintain safe working conditions, established an inspectorate with powers of entry and inspection, and provided for inquiry into mining accidents. The Act was more vigorous in its formal provisions than the factory legislation, but enforcement remained weak throughout the colonial period, particularly in the coal mines of Bengal and Bihar.

The Workmen's Compensation Act of 1923 represented the most significant single advance in the protection of workers against occupational injury in the colonial period. Drawing on the British Workmen's Compensation Act of 1897 and its successors, the Indian Act established a

no-fault compensation scheme for workers injured in the course of their employment, replacing the common law regime of fault-based employer liability with a system of statutory compensation linked to the severity of the injury and the worker's pre-injury earnings. The Act was a major philosophical departure from the individualism of the common law, and it established a principle of collective responsibility for industrial injury that has remained a foundation of OSH law in Bangladesh to the present day, though its practical implementation has been plagued throughout its history by problems of awareness, accessibility, and enforcement.

## 66.2 The Impact of Partition and the Pakistan Period on OSH Law in East Bengal

The partition of British India in 1947 and the creation of Pakistan, with East Bengal becoming the eastern wing of the new state, had profound consequences for the industrial economy and the labour regime of the region. The partition disrupted established trade networks, displaced industrial capital, and created a wave of population movement that fundamentally altered the social composition of the workforce. The jute industry, which had been the dominant sector of the Bengal economy and which depended on the complementarity of jute cultivation in East Bengal with jute processing mills concentrated in Calcutta, was particularly severely disrupted, as the mills and the raw material supply were suddenly located in different nation-states.

The Pakistan period from 1947 to 1971 saw the gradual development of a small but significant industrial sector in East Pakistan, concentrated in Dhaka, Chittagong, and Narayanganj, and including jute mills, textile mills, and light manufacturing enterprises. The labour law of East Pakistan, which continued to apply the British Indian legislative framework with minor modifications, nominally provided for factory inspection and minimum safety standards, but enforcement was almost entirely absent. The industrial sector was dominated by West Pakistani capital, and the Pakistani state showed minimal interest in the welfare of the Bengali industrial workforce. The period also saw the emergence of significant labour activism and the formation of trade unions that fought, often at considerable personal risk, for improved wages and conditions, but OSH was rarely a primary focus of these struggles, which were more immediately concerned with wages, working hours, and the right to organize.

The liberation war of 1971, which resulted in the independence of Bangladesh with an enormous human cost, had the perverse effect of temporarily improving OSH conditions in some sectors, because the disruption of production and the mass exodus of non-Bengali industrial managers created a period of looser discipline and reduced workforce exploitation. But this respite was brief, and the reconstruction of Bangladesh's industrial economy in the early post-independence years was accompanied by a reconstitution of the exploitative labour relations that had characterized the colonial and Pakistani periods.

## 66.3 Post-Independence OSH Law: From the Sheikh Mujib Era to the Garment Revolution

Bangladesh inherited from the colonial and Pakistani period a body of factory legislation that was archaic, inadequately enforced, and entirely ill-suited to the conditions of an impoverished post-colonial state struggling to industrialize. The Factories Act of 1965 (a Pakistani consolidation of the earlier colonial legislation), together with the Workmen's Compensation Act of 1923 as adapted for Bangladesh, and the Mines Act of 1923, constituted the core of the

statutory OSH framework inherited at independence. These statutes were administered by a factory inspectorate that was chronically understaffed, inadequately funded, and politically compromised, and they applied only to a limited range of formal sector enterprises.

The early post-independence period under Sheikh Mujibur Rahman's government (1972-1975) saw ambitious rhetorical commitments to workers' rights and social justice, including the nationalization of major industries and the constitutional guarantee of the right to work and to just conditions of employment. But the combination of post-war economic devastation, political instability, and the practical challenges of state-building left little capacity for the serious reform of OSH governance. The labour inspection system remained functionally inoperative in most respects, workplace deaths and injuries went largely unrecorded and unremedied, and the constitutional provisions for just conditions of work remained purely aspirational.

The period of military rule under General Ziaur Rahman (1975-1981) and subsequent civilian and military governments brought no significant improvement in the formal OSH framework, but it did begin the process that would eventually transform both the economy and the labour relations of Bangladesh: the emergence and explosive growth of the ready-made garments (RMG) sector. Beginning in the late 1970s with a small number of enterprises producing garments for export to the United States and Europe under preferential trade arrangements, the RMG sector grew with extraordinary speed through the 1980s, 1990s, and 2000s to become the dominant sector of Bangladesh's export economy and one of the largest garment manufacturing concentrations in the world.

The growth of the RMG sector created both a new industrial working class, overwhelmingly female, and a new set of occupational hazards that the existing regulatory framework was entirely unprepared to address. The garment factories of Dhaka, Chittagong, and their surrounding areas were typically located in converted residential buildings ill-suited to industrial use, frequently overcrowded, inadequately ventilated, and lacking basic fire safety equipment. The workers who laboured in these factories, mostly young women from rural backgrounds with limited education and no alternative employment options, were acutely vulnerable to the hazards of their work environment and had virtually no effective legal protection against those hazards.

The 1990s and 2000s saw a series of catastrophic fires and building collapses in Bangladesh's garment sector that killed hundreds of workers and attracted international attention to the dire state of OSH governance in the industry. The Spectrum Garments building collapse in 2005, which killed 64 workers, the Hameem Group fire in 2010, which killed 29 workers, the Tazreen Fashions fire in November 2012, which killed at least 117 workers, and the Ali Enterprises fire in Karachi in September 2012, which killed 258 workers producing for buyers who also sourced from Bangladesh, created a pattern of industrial catastrophe that demonstrated, beyond any reasonable doubt, the complete inadequacy of the existing regulatory framework.

### 66.4 The Bangladesh Labour Act, 2006: A Legislative Assessment of the OSH Framework

The enactment of the Bangladesh Labour Act, 2006 (hereinafter BLA 2006), represented an attempt to consolidate and modernize the fragmentary colonial labour legislation that had governed the country's workforce since independence. The BLA 2006 brought together in a

single statute the provisions previously scattered across the Factories Act, the Employment of Labour Act, the Payment of Wages Act, the Maternity Benefit Act, the Workmen's Compensation Act, and numerous other legislative instruments. In relation to OSH specifically, the Act introduced a comprehensive framework of provisions addressing health, safety, and welfare in factories and commercial establishments.

The OSH provisions of the BLA 2006 are contained principally in Chapter Six (Health, Hygiene and Safety), Chapter Seven (Working Environment and Safety), and Chapter Eight (Special Provisions for Safety and Health of Women and Young Persons). These chapters impose detailed requirements relating to cleanliness, ventilation, lighting, overcrowding, sanitary facilities, fire safety, emergency exits, safe handling of machinery, and the provision of protective equipment. The Act requires employers to maintain registers of accidents and to report fatal and serious accidents to the factory inspectorate. It establishes safety committees in factories employing more than fifty workers and requires the appointment of safety officers in factories employing more than five hundred workers.

The formal provisions of the BLA 2006's OSH framework compare reasonably favourably with international standards in terms of their content, but they are undermined by a series of fundamental weaknesses that severely limit their practical effectiveness. The Act's definition of "factory" for the purposes of the safety provisions covers only establishments employing more than five workers using mechanical power, or more than ten workers without mechanical power. This definition excludes a large proportion of Bangladesh's workforce, particularly those employed in the informal sector, in agriculture, in domestic service, in small-scale manufacturing, and in the construction industry. The exclusion of these categories of workers from the formal OSH framework is both philosophically indefensible, because their safety is no less important than that of formal sector workers, and practically significant, because the sectors excluded include some of the most dangerous forms of work in Bangladesh.

The enforcement provisions of the BLA 2006 are similarly inadequate. The Department of Inspection for Factories and Establishments (DIFE), which is responsible for enforcing the Act's OSH provisions, is chronically understaffed: as of 2013, DIFE had approximately 300 inspectors responsible for monitoring compliance at an estimated 50,000 factories, a ratio of approximately 1 inspector per 166 factories that made meaningful regular inspection effectively impossible. The Act's penalty provisions were widely regarded as derisory, with fines for serious violations of OSH standards limited to amounts that represented a trivial cost to most enterprises. The criminal liability provisions, which allowed for prosecution of employers for serious safety violations, were almost never invoked in practice.

The penalty and fine structure of the BLA 2006 represented a fundamental regulatory failure: fines that could be assessed in small amounts were far outweighed by the costs of genuine safety compliance, creating a rational incentive for employers to accept the risk of inspection and penalty rather than invest in meaningful safety improvement. This was not a defect unique to Bangladesh; the adequacy of OSH enforcement penalties has been a perennial concern in regulatory debates internationally. But in Bangladesh, where the gap between formal law and practical reality was particularly extreme and where the political economy of enforcement was

particularly unfavorable to effective action against powerful employers, the penalty inadequacy had especially damaging consequences.

The weaknesses of the BLA 2006's OSH framework were dramatically exposed by the catastrophic events of the subsequent years, culminating in the Rana Plaza collapse of April 2013, which stands as the most devastating industrial disaster in the country's history and one of the worst in the history of global manufacturing.

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## CHAPTER SIXTY-SEVEN: RANA PLAZA AND ITS LEGAL AND INSTITUTIONAL AFTERMATH

### 67.1 The Anatomy of a Catastrophe: Rana Plaza as Systemic Failure

The collapse of the Rana Plaza building at Savar, on the outskirts of Dhaka, at approximately 8:45 in the morning of 24 April 2013, killed at least 1,134 workers and injured more than 2,500 others. It was the deadliest structural failure in the history of the modern garment industry, the worst industrial disaster in Bangladesh's history, and one of the most catastrophic workplace accidents in modern global economic history. It did not happen suddenly; it happened because a system of production, a system of regulation, and a system of political economy all failed simultaneously, and the people who paid the price of these failures were predominantly young women from rural Bangladesh who had come to the city to work in the garment factories and had no effective legal protection against the hazards they faced.

The immediate physical cause of the collapse was the structural failure of a building that had been designed for commercial and office use but had been converted, illegally and without proper engineering assessment, to industrial use for garment production. The building's owner, Sohel Rana, had added several additional floors to the original structure without obtaining the required permits or conducting the engineering studies that would have revealed the building's inability to support the increased load of industrial machinery and workers. The day before the collapse, large cracks appeared in the building's columns and walls, and local engineers who inspected the building advised that it should be evacuated immediately. The banks and shops in the building closed; the garment factory owners on the upper floors refused to close, apparently because of commercial pressure from their buyers to complete orders, and workers were ordered to return the following morning under threats of dismissal.

This is the moment at which the systems failure becomes most clearly visible, because the decision to order workers back into a building that had been assessed as structurally unsafe was not the decision of individual factory owners acting in isolation; it was the product of a system of global supply chain governance that created enormous pressure for on-time delivery of orders, combined with a regulatory system that provided no effective protection for workers who refused to work in unsafe conditions, and a political economy in which the commercial interests of factory owners carried far more weight than the safety concerns of workers.

The systemic dimensions of the Rana Plaza disaster extend across multiple levels. At the building level, the disaster reflected the complete failure of Bangladesh's municipal planning and building regulatory system to prevent the construction and use of structurally unsafe buildings for industrial purposes. At the factory level, the disaster reflected the failure of the labour inspection system to identify and act upon the dangerous conditions in the Rana Plaza factories, and the failure of the OSH management culture within the factories to take seriously the safety concerns of workers. At the supply chain level, the disaster reflected the failure of the brand accountability systems, including the private auditing regimes that many brands used to demonstrate their commitment to supplier compliance, to identify and address fundamental structural safety deficiencies. At the global governance level, the disaster reflected the absence of any binding legal framework that would hold global brands accountable for the safety conditions in their supply chain factories.

The private social auditing systems that many brands claimed to rely upon to ensure supplier compliance proved wholly inadequate to the task. Several of the factories operating in Rana Plaza had undergone recent "ethical audits" by private audit firms hired by the brands and had been found compliant. These audits, conducted by firms with commercial incentives to provide clean reports and without the expertise, authority, or independence necessary for genuine safety assessment, had entirely failed to identify the building's structural deficiencies. The Rana Plaza collapse thus also constitutes a devastating indictment of private social auditing as a mechanism of OSH governance in global supply chains, an indictment that has driven a fundamental reconsideration of the governance architecture for supply chain safety in the decade since the disaster.

### 67.2 The Accord on Fire and Building Safety in Bangladesh: A New Model of Binding Supply Chain Governance

The most significant immediate institutional response to the Rana Plaza disaster was the creation, just three weeks after the collapse, of the Accord on Fire and Building Safety in Bangladesh, a legally binding agreement between global clothing brands and global and national trade unions that established a new model of supply chain safety governance. The Accord was the product of a decade of advocacy by labour rights organisations, global unions, and consumer groups for a mandatory, binding response to the factory safety crisis in Bangladesh, advocacy that had not succeeded in achieving the critical mass of brand sign-on required to make the agreement viable until the scale and visibility of the Rana Plaza disaster made inaction politically untenable.

The Accord represented a fundamental departure from the model of voluntary private social auditing that had previously been the dominant paradigm of supply chain safety governance. Its key features were: the legally binding commitment of signatory brands to ensure that factories producing for them met specified safety standards; the establishment of an independent secretariat with full-time safety inspectors having the authority to conduct unannounced inspections of covered factories; the requirement that brands finance the costs of safety remediation in covered factories; the right of workers and unions to raise safety complaints through an independent complaints mechanism; and the transparency requirement that inspection results and remediation progress be publicly disclosed. The Accord also incorporated an arbitration mechanism allowing disputes between the Accord and non-compliant brands to be

referred to binding arbitration under the United Nations Commission on International Trade Law rules.

The philosophical significance of the Accord's design cannot be overstated. By making the Accord legally binding, the negotiating parties explicitly rejected the voluntarist paradigm of corporate social responsibility that had dominated supply chain governance discourse for the previous two decades and that had proved catastrophically inadequate at Rana Plaza. The Accord's binding character meant that brands could not simply exit the agreement when compliance became inconvenient or commercially uncomfortable; they were legally obligated to maintain their commitments for the duration of the agreement and subject to legal liability if they failed to do so. This represented a direct application, in the supply chain governance context, of the republican political philosophy argument that effective protection of workers' rights requires constraints on the arbitrary power of employers, and that voluntary commitments without binding enforcement mechanisms are insufficient to provide genuine protection.

The Accord's requirement that brands finance the costs of safety remediation in covered factories was equally significant. Under the previous voluntary auditing regime, the costs of safety improvement fell entirely on the supplier factories, which had to absorb these costs within the extremely tight margins imposed by buyer price pressure. The Accord's financing requirement shifted some of these costs back to the brands whose price pressure had created the incentive to cut corners on safety, establishing a degree of financial accountability that the private auditing system had entirely lacked.

The Accord's independent complaints mechanism, through which workers could report safety concerns without fear of retaliation, was in practice one of its most important and innovative features. The mechanism received tens of thousands of worker complaints in its first years of operation, the vast majority of which were substantiated and resulted in corrective action. This volume of complaints demonstrated, with startling clarity, how completely the previous regulatory system had failed to create channels through which workers could safely raise safety concerns, and how much latent awareness of safety problems existed among the workforce that had been suppressed by fear of retaliation.

In its first decade of operation, the Accord and its successor the RMG Sustainability Council (RSC), which took over the Accord's Bangladesh operations in June 2020, conducted nearly 56,000 fire, electrical, and building safety inspections at over 2,400 garment factories, identified and resolved more than 140,000 safety issues at covered factories, and facilitated the formation of over 1,200 joint labour-management Safety Committees. These achievements represent an extraordinary improvement in physical factory safety conditions, and the reduction in the rate of fire deaths and building collapse injuries in the covered sector over the Accord period is a testament to the effectiveness of the model.

### 67.3 The Bangladesh Accord's Legal Architecture: Binding Commitments and Arbitration

The legal architecture of the Bangladesh Accord deserves careful examination, because it represents one of the most sophisticated attempts in modern legal history to construct a binding private governance framework for global supply chain safety. The Accord's legal framework

rested on a combination of contract law, international arbitration, and public law accountability mechanisms that together created a form of transnational private labour law with no clear precedent in the existing international legal order.

The Accord was structured as a contract between signatory brands and signatory trade unions, governed by Dutch law (the Accord secretariat was initially based in Amsterdam), and incorporating an arbitration clause that allowed disputes to be referred to binding international arbitration under the UNCITRAL rules. The brands' commitment to the Accord's safety standards was legally enforceable through this mechanism, meaning that if a brand failed to ensure that its covered factories met the required standards, the Accord or a signatory union could initiate arbitration proceedings and obtain a binding award requiring compliance.

The arbitration mechanism was actually invoked in a small number of cases, most notably against the brand Frasers Group (formerly Sports Direct) in 2017, which had failed to meet its obligations under the Accord. The initiation of arbitration proceedings, even without necessarily proceeding to a final award, proved sufficient to secure compliance in most cases, demonstrating that the mere existence of a credible enforcement mechanism substantially changed the incentive structure for brands compared to voluntary commitments without enforcement.

The Accord's legal architecture has been extensively analysed in the academic literature on global labour governance, and its lessons have been widely discussed as a model for broader supply chain safety governance. The key theoretical contribution of the Accord model, from a jurisprudential perspective, is its demonstration that binding legal commitments, rather than mere voluntary pledges, are necessary and achievable as a foundation for effective supply chain safety governance. This lesson has been directly incorporated into the EU Corporate Sustainability Due Diligence Directive (CS3D, Directive 2024/1760), which requires large companies operating in the EU to conduct due diligence on human rights and environmental impacts in their supply chains, including supply chain safety, and creates legal liability for failures of due diligence. The CS3D represents the extension of the Accord model into the domain of binding public law, and its implications for Bangladesh's garment export sector, which depends heavily on access to EU markets, are profound and are addressed in more detail in Chapter Seventy of this Part.

### 67.4 The Alliance for Bangladesh Worker Safety and the Limits of Voluntary Commitment

Alongside the Accord, a second initiative was created in the aftermath of Rana Plaza: the Alliance for Bangladesh Worker Safety, established by a group of predominantly North American brands, including Walmart and The Gap, that declined to join the Accord. The Alliance differed from the Accord in several fundamental respects: it was a voluntary initiative without binding legal commitments, it did not incorporate trade union participation in its governance, it did not provide workers with independent access to a complaints mechanism, and it was controlled entirely by the participating brands without independent oversight.

The Alliance conducted factory inspections and required covered factories to undertake remediation of identified safety deficiencies, but its voluntary and brand-controlled character significantly undermined its effectiveness and its accountability. The Alliance's inspection and remediation data were not independently verified and were not publicly disclosed in the same

level of detail as the Accord's data, making it difficult to assess the Alliance's actual impact on factory safety. The Alliance disbanded in 2018 without establishing a permanent successor institution, leaving the factories that had been covered only by Alliance monitoring without the binding safety governance provided by the Accord and RSC framework.

The Alliance's relative failure as a safety governance model, compared with the Accord's relative success, provides a natural experiment in the comparative effectiveness of binding versus voluntary approaches to supply chain safety governance. The evidence from this comparison strongly supports the argument, advanced throughout this textbook, that effective protection of workers' rights requires binding legal commitments with credible enforcement mechanisms, and that voluntary initiatives, however well-intentioned, are structurally insufficient to overcome the commercial pressures that otherwise produce unsafe working conditions.

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## CHAPTER SIXTY-EIGHT: THE STATUTORY FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH IN BANGLADESH: DOCTRINE AND CRITIQUE

### 68.1 The Bangladesh Labour Act, 2006: Part VI and VII in Detail

The Bangladesh Labour Act, 2006, as amended through 2018 and subsequently by the 2025 Ordinance, constitutes the primary statutory framework for occupational safety and health in Bangladesh's formal manufacturing sector. A thorough doctrinal analysis of its OSH provisions requires attention not merely to the formal text of the statute but to the interpretive and enforcement context in which those provisions operate, and to the ways in which the Act's formal architecture interacts with the real conditions of Bangladesh's industrial economy.

Chapter Six of the BLA 2006, on health, hygiene and safety, contains twenty-two sections (Sections 51 to 72) imposing requirements relating to cleanliness, ventilation, temperature, dust and fumes, overcrowding, lighting, drinking water, latrines and urinals, spittoons, and the provision of first aid. These provisions represent the basic health and welfare floor below which no covered establishment may lawfully operate, and they draw directly on the colonial Indian Factories Act and its subsequent amendments. The requirements are expressed in broad, general terms that allow significant discretion to employers in determining how they are met in practice, and the absence of detailed technical specifications for many of the requirements makes their enforcement by an inspectorate that lacks technical expertise particularly challenging.

Section 51 of the Act imposes a general duty on every employer to maintain the premises of every factory or establishment in a clean state and free from effluvia arising from any drain, privy, or other nuisance. This general duty of cleanliness does not specify any standard by which cleanliness is to be measured, leaving inspectors with a discretionary judgment that is difficult to exercise consistently or to contest in legal proceedings. The contrast with more sophisticated regulatory frameworks, such as the detailed technical standards contained in UK's Control of Substances Hazardous to Health Regulations or Australia's Work Health and Safety Regulations, is stark, and it illustrates a fundamental weakness of the BLA 2006's OSH framework: its

reliance on broad general duties without the technical specification necessary for meaningful and consistent enforcement.

Chapter Seven of the Act, on working environment and safety, contains the most substantive OSH provisions, including requirements relating to fencing of machinery (Section 61), precautions against dangerous fumes (Section 66), precautions against explosive or flammable dust, gas, vapour or dust (Section 67), safety provisions for construction of floors, stairs and means of access (Section 68), pits, sumps and openings in floors (Section 69), excessive weights (Section 70), and protection of eyes (Section 71). Section 63 imposes a general duty on every employer to ensure, so far as reasonably practicable, the safety of all persons at work. This general duty provision, modelled on similar provisions in British and Australian OSH legislation, is potentially the most powerful tool in the Act's safety framework, because its open-ended character allows it to be applied to a wide range of hazardous situations not specifically addressed by the more detailed provisions.

The "reasonably practicable" standard in Section 63 has significant jurisprudential implications that have not been adequately explored in Bangladesh's legal literature. In jurisdictions with more developed OSH jurisprudence, the "reasonably practicable" standard has been interpreted to require employers to take measures to eliminate or reduce risks to the extent that doing so is practicable and where the risk is not grossly disproportionate to the cost of elimination. This interpretation, which draws on the English Court of Appeal's decision in Edwards v. National Coal Board [1949] and its extensive subsequent elaboration by UK courts and tribunals, imposes a positive duty on employers to proactively identify and address risks, rather than merely reacting to hazards that have already materialized. The Bangladesh courts have not, to date, developed a comparable body of interpretive doctrine around Section 63, and the section's practical impact has consequently been limited.

### 68.2 The Safety Committee and Safety Officer Requirements: Design and Reality

One of the more progressive features of the BLA 2006's OSH framework is the requirement, contained in Section 90, for safety committees in establishments employing more than fifty workers. Safety committees, as instruments of participatory safety governance, represent the institutional embodiment of a philosophy of worker involvement in safety management that has been strongly supported by the OSH research literature. Studies across multiple industries and jurisdictions have consistently found that worker participation in safety management improves safety outcomes, both because workers are often the first to identify hazards in their immediate work environment and because worker involvement in safety decision-making increases the sense of shared ownership of safety standards that is essential for a genuine safety culture.

The BLA 2006's safety committee provisions are, however, significantly weaker than best international practice in several respects. The Act does not specify the composition of safety committees in terms of the balance between management and worker representatives, leaving this to be determined by the employer. In practice, this has resulted in safety committees that are frequently dominated by management rather than representing a genuine partnership between employer and workers. The Act does not require safety committees to meet at any specified frequency, does not specify the minimum powers that safety committees must have, and does not

create any mechanism through which safety committee recommendations must be acted upon by management.

More fundamentally, the Act's safety committee provisions apply only to establishments employing more than fifty workers, leaving the enormous number of smaller establishments, including many sub-contracting enterprises within the garment and other export sectors, without any statutory requirement for participatory safety governance. This exclusion reflects the broader failure of the BLA 2006 to adequately address the structural realities of Bangladeshi industry, in which complex networks of formal and informal sub-contracting relationships mean that the conditions in smaller enterprises are as safety-critical as those in larger ones.

The safety officer requirement in Section 91, which applies to establishments employing more than five hundred workers, similarly falls short of international best practice. The Act requires the appointment of a safety officer with prescribed qualifications, but does not specify the ratio of safety officers to workers, does not define the minimum qualifications in detail (leaving this to regulation), and does not ensure the independence of safety officers from management pressure. In practice, safety officers in many Bangladesh establishments function primarily as compliance administrators rather than as genuine advocates for worker safety with the authority to halt dangerous operations.

### 68.3 The Workmen's Compensation Regime: Historical Analysis and Current Critique

The compensation regime for occupational injury in Bangladesh is governed primarily by Part XII of the BLA 2006 (Sections 150 to 175), which replaced the earlier colonial Workmen's Compensation Act of 1923 but retained its basic structure. The compensation scheme provides for no-fault compensation by the employer to workers who suffer injury or death in the course of their employment, with the amount of compensation determined by a statutory formula linked to the severity of the injury and the worker's monthly wages.

The philosophical basis of the workers' compensation scheme is the principle of employer responsibility for occupational injury, grounded in the employer's capacity to control the conditions of the workplace and in the social fairness argument that those who profit from industrial production should bear the costs of the injuries it causes. This principle is sound, but its implementation in Bangladesh has been severely undermined by the combination of inadequate benefit levels, inaccessible claims processes, and systematic employer non-compliance.

The compensation amounts prescribed by the BLA 2006 for occupational injuries have been widely criticized as entirely inadequate to compensate for the genuine losses suffered by injured workers and their families. The Act provides for a lump-sum payment calculated as a multiple of the worker's monthly wages, with the multiplier varying according to the severity of the injury: total permanent disablement attracts a higher multiplier than partial permanent disablement, which attracts a higher multiplier than temporary disablement. But the multiples specified in the Act, which have not been revised to keep pace with inflation or with changes in the cost of living, result in compensation amounts that are frequently grossly inadequate relative to the lifetime income losses and care costs imposed by serious occupational injury.

The claims process for workers' compensation under the BLA 2006 requires the injured worker or the worker's dependants to initiate proceedings before the Labour Court, which then adjudicates the claim. This process imposes significant barriers of legal knowledge, literacy, access, and cost on claimants who are typically among the most disadvantaged members of Bangladeshi society. Research by labour rights organisations has consistently found that the vast majority of occupational injury compensation claims to which workers or their families are legally entitled are never made, largely because claimants are unaware of their rights, unable to access the legal assistance necessary to navigate the claims process, or deterred by the time and expense of litigation.

The Employment Injury Scheme (EIS) pilot program launched in the RMG sector in the aftermath of Rana Plaza, and formally established as a legal institution by the Bangladesh Labour (Amendment) Ordinance, 2025, represents a significant improvement over the existing workers' compensation regime. The EIS operates on the principle of social insurance: a tripartite fund financed by contributions from employers, the government, and (in some designs) workers, which provides income replacement and rehabilitation support for workers injured in the course of their employment, without requiring injured workers to initiate adversarial legal proceedings against their employers. The ILO has been closely involved in the design and piloting of the EIS, and the scheme draws on established models of social insurance for occupational injury in countries such as Germany, France, and the Nordic states.

The EIS pilot has been operational in the RMG sector since 2023, covering approximately 600 factories and more than 800,000 workers. Early evaluation of the pilot has found that it provides more timely and accessible compensation than the existing court-based system, and that claimant satisfaction with the scheme is significantly higher than with the traditional workers' compensation process. The 2025 Ordinance's formal legal establishment of the EIS Fund represents a critical step towards the nationwide extension of social insurance for occupational injury, though the practical challenges of financing and administering such a scheme for the full breadth of Bangladesh's workforce remain formidable.

### 68.4 The National OSH Policy, 2013, and the National Plan of Action on OSH, 2021-2030

The Rana Plaza disaster catalysed not only the reform of the BLA 2006 but the development of a National Occupational Safety and Health Policy for Bangladesh, adopted in 2013. The National OSH Policy represents the first comprehensive statement of the government's approach to occupational safety and health, articulating the principles, objectives, and institutional arrangements that should guide OSH governance across the economy.

The National OSH Policy draws on the ILO's framework for OSH management systems, set out in ILO-OSH 2001 Guidelines, and establishes as its primary goal the progressive reduction of occupational injuries, diseases, and fatalities through the development and implementation of a coherent national OSH system. The Policy articulates a set of core principles including: the responsibility of employers for the safety and health of workers; the right of workers to know about, and to participate in the management of, occupational hazards; the duty of the state to establish and enforce minimum safety standards; and the importance of a preventive rather than reactive approach to OSH governance.

The National Plan of Action on OSH, 2021-2030 (NPA-OSH), which was developed with ILO technical assistance and provides the operational framework for implementing the National OSH Policy, sets out specific targets and action plans for improving OSH governance across the economy over the decade to 2030. The NPA-OSH is organized around five strategic objectives: strengthening the national OSH legal and institutional framework; improving OSH information, data collection, and research; building OSH capacity through training and education; promoting OSH culture and awareness; and enhancing social dialogue on OSH. The Plan includes specific targets for increasing the ratio of labour inspectors to workplaces, extending OSH coverage to informal sector workers, developing sector-specific OSH regulations, and establishing a comprehensive occupational disease reporting and surveillance system.

The NPA-OSH is an ambitious and well-designed planning document, but its implementation has been slow and uneven, constrained by the same institutional capacity limitations that have long undermined OSH governance in Bangladesh. The Labour Reform Commission's April 2025 report acknowledged that progress on implementing the NPA-OSH targets had been significantly below plan, and recommended urgent measures to accelerate implementation, including increased budgetary allocation for DIFE, recruitment and training of additional inspectors, and the establishment of a dedicated NPA-OSH implementation monitoring unit.

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## CHAPTER SIXTY-NINE: THE 2025 WATERSHED: ILO CONVENTION RATIFICATIONS AND THE AMENDMENT ORDINANCE

### 69.1 Bangladesh's Ratification of ILO Conventions Nos. 155, 187, and 190: Historical and Legal Significance

On 20 November 2025, Bangladesh made international legal history by depositing, simultaneously, the instruments of ratification of ILO Convention No. 155 (Occupational Safety and Health Convention, 1981), ILO Convention No. 187 (Promotional Framework for Occupational Safety and Health Convention, 2006), and ILO Convention No. 190 (Violence and Harassment Convention, 2019), with the Director-General of the ILO in Geneva. This triple ratification, the first such simultaneous deposit of three ILO conventions since Bangladesh ratified conventions at the time of independence in 1972, was described by the Labour and Employment Adviser of the interim government as a milestone in the history of Bangladesh's commitment to workers' rights.

The historical significance of these ratifications is difficult to overstate. Conventions Nos. 155 and 187 had been elevated to the status of fundamental ILO conventions by the International Labour Conference in 2022, meaning that they now form part of the set of minimum standards that the ILO considers binding on all its members by virtue of their membership, regardless of ratification. But formal ratification transforms these standards from politically aspirational into legally binding obligations under international law, creating a treaty relationship between Bangladesh and the ILO that is subject to the monitoring and reporting obligations of the ILO's supervisory system. With these ratifications, Bangladesh became a party to all 11 fundamental ILO instruments (the 10 fundamental conventions plus the protocol to Convention No. 29 on

forced labour), becoming the second country in the Asia-Pacific region to achieve this status and demonstrating a formal commitment to international labour standards that now needs to be translated into practice.

The jurisprudential implications of these ratifications for Bangladesh's domestic OSH law are significant. The ratification of Convention No. 155 creates a binding obligation on Bangladesh to formulate, implement, and periodically review a coherent national policy on occupational safety and health, with the aim of preventing accidents and injury to health arising out of or occurring in the course of work. The Convention requires that this national policy address the main spheres of action in the fields of work and the working environment: design, testing, choice, substitution, installation, arrangement, use and maintenance of material elements of work; relationships between the material elements of work and the persons who carry out the work, as well as adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers; training of the persons involved; communication and cooperation at the level of the work group and the enterprise and at all other appropriate levels; protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy.

Convention No. 187 adds to these requirements the obligation to promote the development of a preventive safety and health culture and to build, step-by-step, a national system and national programme on occupational safety and health. The concept of a preventive culture, central to Convention No. 187, represents a philosophical orientation toward OSH that goes beyond mere compliance with minimum standards: it encompasses the attitudes, values, perceptions, and behavioural patterns of organizations and individuals that together determine the extent to which genuine commitment to safety is embedded in the daily life of the workplace. Developing a genuine preventive culture in Bangladesh's industrial sector will require sustained effort across multiple dimensions: regulatory reform, institutional strengthening, worker empowerment, management capacity building, and the transformation of the political economy that currently makes safety a secondary concern to production pressure.

Convention No. 190, the Violence and Harassment Convention, has a particular connection to the OSH framework that deserves detailed analysis. Convention No. 190 is the first international instrument explicitly to address violence and harassment in the world of work, including gender-based violence and harassment, as a dimension of occupational safety and health. The Convention defines violence and harassment as a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm, and it extends protection to all workers regardless of their contractual status, including informal workers, domestic workers, gig workers, and workers in non-standard employment.

Bangladesh's ratification of Convention No. 190 is particularly significant given the extensive evidence of gender-based violence and harassment in Bangladesh's garment sector and other industries, documented in detail in Part Nine of this work and in the reports of numerous international human rights organisations. The ratification creates a binding obligation to adopt legislation, policies, and other measures to address violence and harassment in the world of work, in line with the Convention's requirements. The 2025 Ordinance introduced specific

provisions aligned with Convention No. 190, including a statutory prohibition on sexual harassment and violence in the workplace and a requirement for workplace policies addressing these issues, but the implementation of these provisions will require substantial institutional development to be genuinely effective.

### 69.2 The Bangladesh Labour (Amendment) Ordinance, 2025: OSH Provisions in Detail

The Bangladesh Labour (Amendment) Ordinance, 2025, promulgated on 17 November 2025 just days before the convention ratifications, represented the most comprehensive single legislative intervention in the history of Bangladesh's OSH framework. The Ordinance was the product of extensive consultations drawing on the recommendations of the Labour Reform Commission, the requirements of the newly ratified ILO conventions, and the accumulated learning of more than a decade of post-Rana Plaza reform.

In relation to occupational safety and health specifically, the 2025 Ordinance introduced a number of significant changes to the BLA 2006's existing framework. The Ordinance modernized the definition of occupational safety and health in Section 2 of the Act, incorporating a comprehensive conception of OSH that encompasses physical, psychological, and social wellbeing in the working environment, rather than limiting the concept to the prevention of physical injury. This definitional change has significant practical implications, because it creates a legislative foundation for extending OSH obligations to encompass the prevention of work-related psychological harm, including stress, burnout, and the mental health consequences of harassment and bullying, which have historically been entirely outside the purview of Bangladesh's OSH regulatory framework.

The Ordinance also introduced provisions for the identification and special regulation of high-risk jobs and industries, requiring the government to publish and periodically update a list of hazardous occupations attracting heightened regulatory attention, including mandatory risk assessments, more frequent inspection, higher compensation for occupational injury, and additional protective equipment requirements. This hazardous occupation framework, drawing on comparable provisions in the OSH legislation of Germany, France, and the Nordic states, represents an important step toward a more differentiated and risk-proportionate approach to OSH regulation in Bangladesh.

The Ordinance strengthened the provisions on safety committees by requiring that worker representatives constitute at least half of the membership of any safety committee, ensuring that safety committees function as genuine joint governance bodies rather than management-controlled advisory groups. It also extended the safety committee requirement to establishments employing more than twenty workers, significantly broadening the scope of participatory safety governance.

The Ordinance introduced, for the first time, specific provisions on psychological safety in the workplace, requiring employers to develop and implement policies to prevent work-related psychological harm, including provisions on workload management, rest periods, and the prevention of bullying and harassment. These provisions, while still general in their terms,

represent a significant philosophical advance in Bangladesh's approach to OSH, acknowledging that the duty of care for workers' safety encompasses mental as well as physical wellbeing.

The 2025 Ordinance also significantly enhanced the penalty structure for OSH violations. Fines for serious safety violations were increased substantially, with the maximum fine for violations resulting in death or serious injury raised to levels that represent a genuinely significant deterrent rather than a minor cost of doing business. The Ordinance introduced for the first time a provision allowing courts to order the closure of establishments that persistently violate OSH standards, providing a more powerful enforcement tool than the existing system of fines.

### 69.3 The Labour Reform Commission's Recommendations on OSH: A Critical Assessment

The Labour Reform Commission, established by the interim government in November 2024 under the chairmanship of Syed Sultan Uddin Ahmed of the Bangladesh Institute of Labour Studies, submitted its comprehensive report titled "The Transformation Framework of the World of Work: Workers' Rights, Harmonized Industrial Relations and Inclusive Development" in April 2025. The Commission's recommendations on occupational safety and health represent the most thorough and thoughtful examination of the OSH reform agenda in Bangladesh's history, and they deserve extended critical analysis.

The Commission's central recommendation on OSH was the urgent modernization of the Bangladesh Labour Act 2006 to reflect modern standards of workplace safety, including the incorporation of the systems-based approach to OSH management mandated by ILO Conventions Nos. 155 and 187. The Commission recommended updating the legislative definition of occupational safety and health to encompass psychological and social dimensions of wellbeing, identifying and specially regulating high-risk occupations and industries, extending mandatory safety committee requirements to smaller establishments, requiring safety risk assessments as a condition of operating any establishment covered by the Act, and establishing a comprehensive occupational disease reporting and surveillance system.

The Commission's recommendations on extending OSH coverage to informal sector workers are among the most philosophically significant in the entire report. The Commission argued, drawing on the constitutional principle of equality before the law and on Bangladesh's international human rights commitments, that the exclusion of the vast majority of Bangladesh's workforce from the formal OSH framework is both constitutionally questionable and practically indefensible. The Commission recommended a phased approach to extending OSH coverage, beginning with agricultural workers and construction workers who face the highest rates of occupational injury and death, and progressively extending to other informal sector categories.

This recommendation has profound philosophical and practical implications. Philosophically, it reflects the position, consistent with the capabilities approach and with the human rights grounding of OSH standards discussed in Chapter Sixty-Five, that the right to a safe working environment is a universal right not contingent on the worker's formal employment status. Practically, the extension of OSH coverage to informal sector workers requires the development of regulatory frameworks adapted to the specific conditions of informal work, where the standard factory inspection model is inapplicable and where different mechanisms of safety governance,

including community-based oversight, peer-to-peer training, and mobile inspection units, need to be developed.

The Commission also recommended significant strengthening of the institutional infrastructure for OSH governance, including a substantial increase in the funding and staffing of DIFE, the creation of specialist OSH inspection units with technical expertise in sector-specific hazards, the establishment of a national occupational disease register and reporting system, and the development of an integrated digital platform for OSH inspection, reporting, and enforcement. The Commission's recommendation for a national labour identity system, which would register all workers in a digital database and enable their access to OSH protections, compensation schemes, and other labour rights, represents a particularly innovative approach to the institutional challenge of extending protection to the informal workforce.

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## CHAPTER SEVENTY: THE INSTITUTIONAL ARCHITECTURE OF OSH ENFORCEMENT: DIFE, THE RSC, AND THE POLITICAL ECONOMY OF COMPLIANCE

### 70.1 The Department of Inspection for Factories and Establishments: Institutional History and Current Capacity

The Department of Inspection for Factories and Establishments (DIFE) is the primary state institution responsible for enforcing Bangladesh's OSH legal framework. Understanding DIFE's institutional history, its current capacity, and the structural constraints on its effectiveness is essential to any serious analysis of the gap between formal OSH law and the reality of workplace safety in Bangladesh.

DIFE's institutional origins lie in the colonial factory inspectorate established under the Indian Factories Act of 1881 and its successors. The inspectorate was designed from the outset as a reactive, compliance-monitoring institution rather than a proactive, systems-based safety regulator, and this foundational design logic has persisted throughout DIFE's institutional evolution, shaping its culture, its methods, and its limitations in ways that continue to define its performance today. The colonial inspectorate was explicitly modelled on the British Factory Inspectorate, itself a product of the Victorian regulatory state, and it imported the hierarchical, bureaucratic, legalistic culture of that institution into the very different social, economic, and political conditions of colonial Bengal.

The post-independence period saw gradual expansion of DIFE's staff and jurisdiction, but without a corresponding transformation of its institutional culture or its methods. The fundamental problems of the institution remained: chronically inadequate staffing relative to the number of establishments to be monitored, inadequate technical expertise for assessing the complex hazards of modern industrial production, limited independence from political interference in enforcement decisions, and a culture of reactive compliance monitoring rather than proactive preventive engagement.

The post-Rana Plaza period saw unprecedented attention to DIFE's capacity limitations and unprecedented investment in strengthening the institution. With ILO technical assistance and funding from Canada, the Netherlands, the United Kingdom, and Denmark, DIFE underwent a significant expansion and modernization, including recruitment and training of additional inspectors, development of the Labour Inspection Management Application (LIMA) for digital inspection management, creation of a specialized Industrial Safety Unit (ISU) with expertise in building and fire safety, and development of sector-specific inspection protocols and checklists. The Labour Reform Commission's April 2025 report noted that the number of active DIFE inspectors had increased substantially since 2013, though it remained well below the level required for meaningful regular inspection of all covered establishments.

As of early 2026, DIFE employs approximately 800 inspectors responsible for monitoring compliance across an estimated 70,000 covered establishments. This gives a ratio of approximately 1 inspector per 87 establishments, which represents a significant improvement over the pre-2013 ratio of approximately 1 per 166, but which still falls well short of the ILO's recommended standard of 1 inspector per 40 establishments in industrial economies, or of the comparable ratios achieved in more effective OSH enforcement systems such as Germany's Berufsgenossenschaft system or the Scandinavian labour inspectorates.

The political economy of DIFE's enforcement activity is shaped by a complex web of interests and pressures that systematically distort the institution's behaviour in ways that reduce its effectiveness as a genuine safety regulator. The most significant of these pressures is the political and commercial influence of major employers, particularly in the garment sector, who have historically been able to suppress or deflect DIFE enforcement actions through a combination of political connections, commercial leverage, and outright corruption. The Labour Reform Commission's report acknowledged that corruption within the inspection system remained a significant problem, with inspectors in some cases accepting payments from employers in exchange for favourable inspection reports, and recommended the development of anti-corruption measures including random assignment of inspectors to establishments, digital tracking of inspection activity, and independent monitoring of inspection quality.

### 70.2 The RMG Sustainability Council and the Model of Private-Public Co-Regulation

The RMG Sustainability Council (RSC), which assumed responsibility for implementing the International Accord's factory safety programme in Bangladesh from June 2020, represents a distinctive model of co-regulation in which private actors, specifically global brands and trade unions, exercise regulatory functions that are formally the responsibility of the state. The RSC is a tripartite institution governed by representatives of brand signatories, global and national trade unions, and factory owners, and it operates through a secretariat of professional safety engineers and inspectors with authority to conduct inspections, require remediation, and recommend the suspension of production in unsafe factories.

The philosophical status of the RSC as a regulatory institution is contested. From a traditional public law perspective, the delegation of safety inspection and enforcement functions to a private body lacking formal legal authority raises concerns about democratic accountability, transparency, and the rule of law. The RSC's authority rests on the contractual commitments of

brand signatories and the commercial leverage that those commitments confer, rather than on the coercive authority of the state, which means that it can only operate effectively in the portion of the industry that is covered by brand signatories. Factories producing for buyers that have not signed the Accord, including many domestic market producers and factories supplying non-signatory international buyers, are entirely outside the RSC's reach.

From the perspective of regulatory effectiveness, however, the RSC's performance over the period since 2020 has been significantly stronger than DIFE's in the covered sector. The RSC's full-time professional safety engineers, with sector-specific expertise and the commercial authority to require remediation as a condition of brand sourcing, have achieved levels of compliance monitoring and enforcement that DIFE has been unable to match. The RSC's transparent public reporting of inspection results and remediation progress provides a degree of accountability and public information that DIFE's inspection regime has historically not.

The development of a sustainable model of OSH governance for Bangladesh's garment sector requires the integration of the RSC's operational strengths with the democratic accountability and universal coverage of state regulation. Several models of co-regulation have been proposed in the academic and policy literature, ranging from formal delegation of regulatory authority to the RSC under public law frameworks, through to the development of mutual recognition arrangements between DIFE and the RSC that would reduce duplication and allow each institution to focus on its comparative advantage. The Labour Reform Commission's 2025 report recommended the development of a formal statutory framework for co-regulation that would recognize the RSC's inspection results and remediation orders as having the effect of official regulatory decisions, while maintaining DIFE's ultimate authority and accountability for the safety of the sector as a whole.

The expansion of the International Accord's Worker Complaints Mechanism in Bangladesh from mid-November 2025, to cover issues beyond occupational safety and health (OSH), represents a further evolution of the RSC model in the direction of a comprehensive rights enforcement system. The expanded mechanism provides workers with an accessible channel to raise concerns about a range of labour rights violations, not merely safety issues, and its extension represents a significant broadening of the private governance model's scope.

### 70.3 The Political Economy of OSH Compliance: Why Safety Standards Fail in Practice

The gap between formal OSH standards and the reality of workplace safety in Bangladesh is not primarily a consequence of inadequate law; it is a consequence of the political economy in which OSH law must operate. Understanding this political economy requires attention to the interests of the multiple actors, employers, workers, state institutions, global brands, consumer market actors, and international governance bodies, whose interactions produce the outcomes that OSH regulation is designed to influence.

Employers in Bangladesh's export manufacturing sector face constant, intense pressure on costs and delivery times from global buyers whose procurement models are built on rapid response to fashion cycles, minimum inventory, and competitive price pressure. In this environment, investment in genuine safety improvement is experienced not as a regulatory requirement to be

met but as a cost to be minimized, and the decision about how much to invest in safety is made through a calculation that weighs the probability and cost of regulatory enforcement against the cost of compliance. Where the probability of meaningful enforcement is low (because DIFE is understaffed, inspectors are corruptible, and enforcement cases are slow and uncertain), and the cost of compliance is high (because it may require significant physical upgrades to premises and equipment), the rational employer response is to invest minimally in compliance and to manage the risk of enforcement.

This incentive structure is not unique to Bangladesh; it characterizes the political economy of OSH regulation in most developing countries and in many developed ones. But in Bangladesh, the factors that amplify the incentive to under-invest in safety are particularly powerful: the extreme concentration of the economy in the export garment sector, the fierce international competition for export orders, the weakness of the enforcement system, the limited capacity of workers to organize effectively and press for safety improvements, and the political connections of major employers that insulate them from effective regulatory pressure.

The political connections of major employers in Bangladesh's industrial sector have historically constituted one of the most significant obstacles to effective OSH enforcement. Many of the largest garment factory owners have been members of the National Assembly and of the major political parties, and their political influence has been used, in well-documented instances, to suppress enforcement actions, delay investigations into factory disasters, and prevent the imposition of meaningful penalties for safety violations. The Labour Reform Commission's 2025 report described this structural conflict of interest between political power and regulatory independence as one of the most serious systemic problems in Bangladesh's labour governance system and recommended institutional measures to protect the independence of DIFE from political interference, including the creation of an independent OSH regulatory authority with a governance structure modelled on independent regulatory agencies in other domains.

The global brands that source from Bangladesh's garment sector constitute another powerful actor in the political economy of OSH compliance. As the Rana Plaza disaster demonstrated, global brands have the commercial leverage to demand improvements in supplier safety standards, and when they exercise this leverage through binding commitments, as under the Accord model, significant improvements in safety outcomes can be achieved. But brands also have commercial interests in minimizing the costs of their compliance programmes and in maintaining access to the cheap production that Bangladesh's labour market provides, and these interests can lead them to accept levels of supplier safety improvement that are visible and reputationally sustainable rather than comprehensive and genuinely risk-reducing. The recent development of the EU Corporate Sustainability Due Diligence Directive (CS3D), which came into force as EU Directive 2024/1760 and is being progressively implemented by EU member states, represents the first systematic attempt to impose binding legal obligations on brands with respect to supply chain safety, and its implementation will significantly change the incentive structure for EU-sourcing brands operating in Bangladesh.

# CHAPTER SEVENTY-ONE: SECTORAL ANALYSIS OF OCCUPATIONAL SAFETY AND HEALTH IN BANGLADESH

## 71.1 The Ready-Made Garments Sector: Progress, Persistence, and Remaining Challenges

The ready-made garments sector has been the focus of the most intensive OSH governance activity in Bangladesh's history, and it has consequently seen the most significant improvements in workplace safety outcomes over the post-Rana Plaza decade. The combination of the Accord/RSC framework, the post-2013 amendments to the BLA 2006, the development of the National OSH Policy and Plan, and the commercial pressure from global buyers committed to supplier safety improvement has produced measurable, if uneven, progress in the physical safety conditions of the sector's factories.

The RSC's periodic compliance reports provide the most comprehensive available data on factory safety conditions in the covered sector. By the end of 2024, RSC data showed that more than 90 percent of the initial remediation requirements in covered factories had been addressed, including the correction of structural, fire, and electrical safety deficiencies that had been identified in inspections conducted immediately after the Accord's launch in 2013. The rate of serious accidents, including fires and building collapses, in covered factories has declined significantly over the decade, though it has not been eliminated. Worker awareness of safety rights and procedures, as measured by RSC surveys, has increased substantially, and the number of worker complaints to the RSC's complaints mechanism has remained high, indicating that workers feel sufficiently safe from retaliation to use the mechanism when they identify safety concerns.

These achievements are real and significant, but they must be assessed against the full landscape of the garment sector's safety challenge. The RSC's coverage extends to approximately 2,400 factories, which represent those producing for signatory brands and constitute the top tier of the sector in terms of size, formality, and buyer accountability. The sector as a whole includes thousands of smaller sub-contracting factories and informal production units that are entirely outside the RSC's coverage and that operate under conditions considerably less safe than those in the RSC-covered tier. The safety improvement achieved in the formal, brand-compliant tier of the sector has not been matched in the informal and sub-contracted tiers, and workers in these lower tiers remain exposed to the kinds of hazardous conditions that characterized the sector as a whole before 2013.

The garment sector's remaining OSH challenges include: the psychosocial hazards associated with extreme production pressure, including stress, fatigue, and the mental health consequences of supervisor abuse and harassment; the ergonomic hazards of prolonged sedentary work in uncomfortable positions with inadequate breaks; the chemical hazards associated with dyes, solvents, and other chemical substances used in production processes; the heat stress associated with working in poorly ventilated factories during Bangladesh's extremely hot summers; and the specific hazards that fall within the scope of ILO Convention No. 190, particularly gender-based violence and harassment, which remains pervasive and underreported throughout the sector.

The international academic literature on OSH in Bangladesh's garment sector has been significantly enriched by a series of high-quality empirical studies conducted between 2020 and 2025. Research published in the journals Occupational and Environmental Medicine, BMJ Open, and the International Journal of Environmental Research and Public Health has documented the high prevalence of work-related musculoskeletal disorders among garment workers, the significant incidence of work-related mental health problems including anxiety and depression, the widespread exposure to chemical hazards, and the particular vulnerability of women workers to both physical and psychosocial hazards. These studies provide an important empirical foundation for the reform of OSH regulation in the sector, and they are discussed in more detail in Chapter Seventy-Two.

## 71.2 The Construction Sector: The Invisible Carnage

If the garment sector has been the focus of the most intensive OSH governance attention in Bangladesh, the construction sector has been conspicuously neglected, despite being one of the most dangerous sectors of the Bangladeshi economy by any measure of occupational injury and death rates. The construction sector employs an estimated four to five million workers, predominantly male, including large numbers of informal, seasonal, and migrant workers who have virtually no legal protection against the hazards of their work. Construction workers in Bangladesh routinely work at height without fall protection equipment, with inadequate scaffolding and temporary structures, in environments with unguarded machinery and electrical hazards, and without access to any meaningful occupational health services.

Data on occupational injuries and deaths in Bangladesh's construction sector is extremely limited, partly because the sector's predominantly informal character means that most injuries and deaths go unreported, and partly because the national occupational injury surveillance system is entirely inadequate to capture events in the informal economy. The available data, drawn from hospital records, media reports, and the research of non-governmental organisations, suggests that the construction sector accounts for a disproportionately large share of Bangladesh's occupational deaths, with conservative estimates suggesting hundreds of construction fatalities annually, compared to the tens of thousands of construction workers killed annually in construction globally (with developing countries accounting for the vast majority).

The legal framework for construction safety in Bangladesh is fragmented and inadequate. The BLA 2006 applies to construction establishments that meet the Act's definitional criteria, but the transient and project-based nature of construction work means that the standard factory inspection model is poorly adapted to the sector. The Bangladesh National Building Code addresses structural safety in construction but does not comprehensively address the occupational safety of construction workers. There are no sector-specific OSH regulations for construction comparable to those that exist in countries with more developed regulatory frameworks, such as the UK's Construction (Design and Management) Regulations 2015 or Australia's Code of Practice: Construction Work.

The Labour Reform Commission's 2025 report identified the construction sector as one of the highest priorities for extending OSH coverage and developing sector-specific regulatory frameworks. The Commission recommended the immediate development of construction-

specific OSH regulations, the training and deployment of specialist construction safety inspectors within DIFE, and the development of a construction safety registration system that would require all construction sites above a specified size to register with DIFE and comply with sector-specific safety requirements. These recommendations are sound, and their implementation would represent a substantial improvement in the legal protection of construction workers, though the practical challenge of enforcing OSH standards across the thousands of construction sites that operate simultaneously across Bangladesh at any given time is formidable.

### 71.3 The Agriculture Sector: Pesticide Poisoning, Machinery Hazards, and Structural Neglect

Agriculture is the single largest sector of Bangladesh's economy by employment, with approximately 37 percent of the active workforce engaged in agricultural activities. It is also one of the most hazardous sectors, characterized by a distinctive set of occupational risks including pesticide poisoning, agricultural machinery accidents, drowning in flood-prone areas, heat stroke during the harvest season, and musculoskeletal injuries from heavy manual labour. Despite the scale of agricultural employment and the seriousness of these hazards, agricultural workers are entirely excluded from the coverage of the Bangladesh Labour Act, 2006, leaving them without the legal protections that the Act provides to workers in other sectors.

The exclusion of agricultural workers from the BLA 2006 reflects a combination of historical inertia, originating in colonial legislation that treated agricultural labour as a distinct and inferior category, and contemporary political economy, in which powerful landowner and agribusiness interests have successfully resisted the extension of formal labour rights to the agricultural sector. The exclusion is philosophically indefensible from any of the theoretical perspectives examined in this work: agricultural workers face serious occupational hazards, their right to safe working conditions is no less fundamental than that of industrial workers, and the historical arguments for their exclusion are rooted in class and power relations rather than in any principled account of their different legal status.

The hazard of pesticide poisoning deserves particular attention because of both its scale and its distinctive legal and regulatory dimensions. Bangladesh is one of the world's largest users of pesticides per unit of agricultural land, and occupational exposure to pesticides is a major cause of acute and chronic illness among agricultural workers, including neurological damage, reproductive health effects, and cancer. The regulatory framework for pesticide safety in Bangladesh is fragmented between the Pest Control Act, the Bangladesh Standards, the Pesticide Ordinance, and various other instruments, and its implementation is weak. Agricultural workers, who often handle pesticides without appropriate protective equipment and with minimal understanding of their hazards, are acutely exposed, and the absence of occupational health services in rural areas means that pesticide-related illness is rarely properly diagnosed or treated.

The extension of OSH protection to agricultural workers, as recommended by the Labour Reform Commission, requires not merely the extension of the BLA 2006's formal provisions but the development of a completely new regulatory approach adapted to the specific conditions of agricultural work, including the establishment of maximum safe pesticide exposure limits, requirements for protective equipment in pesticide handling, restrictions on the use of the most

hazardous pesticide formulations, and the development of agricultural extension services that incorporate OSH awareness and training into their activities.

### 71.4 The Shipbreaking Industry: Hazardous Work at the Edge of Legal Accountability

The shipbreaking industry at Sitakunda, near Chittagong, represents one of the most extreme examples of hazardous work in Bangladesh and one of the most serious ongoing failures of OSH governance. Bangladesh is one of the world's largest ship-breaking countries, responsible for the dismantling of large ocean-going vessels at the end of their operational lives, and the Sitakunda shipbreaking yards employ tens of thousands of workers in conditions of extraordinary danger and with minimal legal protection.

The hazards of shipbreaking are multiple and severe: structural collapse of deteriorating vessels, falls from height, explosions of residual flammable gases and fuel, fire, exposure to asbestos (which was widely used in older vessels), toxic heavy metals including lead and mercury, and other hazardous substances. Workers in the Sitakunda yards frequently work without adequate protective equipment, without meaningful safety training, and without access to occupational health services. Fatalities and serious injuries are common; independent monitoring by organizations such as the NGO Shipbreaking Platform and Greenpeace has documented dozens of worker deaths annually in the Sitakunda yards over recent years, with accident investigation and accountability almost entirely absent.

The legal framework for occupational safety in the shipbreaking industry is a particularly vivid illustration of the fragmentation and inadequacy of Bangladesh's OSH governance. The industry is nominally regulated by the Shipping Ministry under the Merchant Shipping Ordinance rather than by the labour inspectorate, and the OSH provisions of the BLA 2006 apply only imperfectly to the distinctive hazards and working arrangements of the sector. The Basel Convention and the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention, 2009, which entered into force in June 2025) impose international obligations regarding the safe handling of hazardous materials in ship recycling, and Bangladesh's ratification of the Hong Kong Convention creates a binding framework for regulating the industry that the domestic legal framework has not yet fully incorporated.

The reform of OSH governance in the shipbreaking sector requires a comprehensive approach encompassing the development and enforcement of detailed technical safety regulations adapted to the specific hazards of ship recycling, a significant expansion of inspection capacity dedicated to the sector, mandatory occupational health surveillance for shipbreaking workers, the establishment of effective accident reporting and investigation systems, and engagement with the international legal framework for responsible ship recycling under the Hong Kong Convention. The Labour Reform Commission's 2025 report specifically addressed the shipbreaking sector as a priority for OSH reform, and its recommendations provide a sound basis for developing a sector-specific regulatory framework.

# CHAPTER SEVENTY-TWO: OCCUPATIONAL DISEASE, HEALTH SURVEILLANCE, AND THE HIDDEN EPIDEMIC

## 72.1 The Challenge of Occupational Disease Recognition and Registration

One of the most significant and least visible dimensions of the OSH crisis in Bangladesh is the epidemic of occupational disease that affects workers across multiple sectors but is almost entirely unrecognized in the official statistics, uncompensated by the legal framework, and untreated by the health system. Occupational disease, unlike occupational accidents, does not announce itself through a dramatic event; it develops slowly, often over years or decades, through the cumulative effect of exposure to hazardous substances or working conditions, and its causal connection with work is frequently disputed, invisible to ordinary observation, and difficult to establish through the evidentiary standards of legal proceedings.

The BLA 2006 provides for compensation for occupational disease through a list of specified diseases contained in Schedule One of the Act, which broadly follows the ILO's Schedule I to Convention No. 121 on employment injury benefits. The scheduled diseases include pneumoconiosis (including silicosis and asbestosis), occupational deafness, poisoning by specified substances, and several other conditions. In principle, workers who develop a scheduled disease as a result of their employment are entitled to compensation under the Act's workers' compensation scheme. In practice, the compensation framework for occupational disease is almost entirely non-functional: awareness among workers of their entitlement to compensation for occupational disease is minimal, the medical infrastructure for diagnosing occupational disease in Bangladesh is extremely limited, the evidentiary requirements for establishing work-causation of disease are practically insurmountable for most workers, and the claims process is inaccessible.

The development of a functional occupational disease recognition and compensation system for Bangladesh requires investment across multiple dimensions simultaneously. The diagnostic capacity of Bangladesh's health system for occupational disease needs substantial strengthening, including the training of physicians in occupational medicine, the establishment of specialized occupational health clinics and referral pathways, and the development of a national occupational disease register. The evidentiary framework for establishing work-causation needs to be reformed to shift the burden of proof in a way that is more realistic given the limitations of available evidence. The compensation amounts for occupational disease need to be revised to reflect the genuine lifetime costs of disabling conditions. And awareness among workers of their rights in relation to occupational disease needs to be substantially improved through education and outreach programmes.

The National Occupational Health and Safety Training and Research Institute (NOHSTRI), recently established in Rajshahi with ILO support, represents an important institutional step toward developing the knowledge infrastructure for improved occupational disease recognition and management in Bangladesh. NOHSTRI's mandate includes research on occupational hazards in Bangladesh's major industries, development of sector-specific occupational health protocols, training of health professionals in occupational medicine, and production of the public

information materials necessary to improve worker awareness of occupational disease risks and rights.

### 72.2 Work-Related Musculoskeletal Disorders: The Epidemic in the Garment Sector

Work-related musculoskeletal disorders (WRMSDs) constitute one of the most prevalent and economically significant occupational health problems in Bangladesh's garment sector, though their scale is not reflected in the official OSH statistics that focus on traumatic injuries and fatalities. WRMSDs encompass a range of conditions affecting the muscles, tendons, nerves, and skeletal structures that arise from or are exacerbated by work activities, including back pain, neck and shoulder pain, carpal tunnel syndrome, and repetitive strain injuries of the upper limbs.

Research published in the International Journal of Environmental Research and Public Health in 2023 and 2024, based on surveys of garment workers in Dhaka and Gazipur, found that the prevalence of WRMSDs among garment workers was extremely high, with more than 60 percent of surveyed workers reporting significant musculoskeletal pain and more than 30 percent reporting pain severe enough to interfere with their ability to work. The research identified prolonged static postures (particularly sustained sitting in constrained positions), repetitive motion, high workload and time pressure, and inadequate ergonomic design of workstations as the primary occupational risk factors for WRMSDs in the sector.

The regulatory framework for addressing WRMSDs in Bangladesh is entirely inadequate. The BLA 2006 contains no specific provisions on ergonomics or on the prevention of musculoskeletal disorders, and DIFE inspectors have neither the training nor the authority to assess ergonomic risks or require employers to address them. The NPA-OSH 2021-2030 identifies ergonomic hazards as a priority area for regulatory attention, but the specific measures necessary to address them, including the development of ergonomic standards for workstation design in the garment sector, training of employers and supervisors in ergonomics, and pre-employment and periodic occupational health assessments for workers in high-risk roles, have not yet been implemented.

The reform of OSH regulation to address WRMSDs in the garment sector requires the development of sector-specific ergonomic guidelines, the inclusion of ergonomic risk assessment in DIFE's inspection protocols, the training of safety committee members in ergonomic hazard identification and control, and the development of occupational health service provision that includes surveillance for WRMSDs and access to physiotherapy and other rehabilitation services for affected workers.

### 72.3 Psychosocial Hazards and Mental Health at Work: An Emerging Priority

The relationship between working conditions and mental health has been an increasingly prominent theme in global OSH discourse over the past decade, driven by growing evidence of the prevalence of work-related mental health problems, the economic costs of lost productivity and disability associated with these conditions, and the contribution of specific features of the work environment to the development of conditions such as anxiety, depression, and burnout. The WHO and the ILO jointly published a set of guidelines on mental health at work in 2022,

representing the first comprehensive international guidance document addressing the prevention and management of work-related mental health problems across all sectors.

In Bangladesh's industrial context, the psychosocial hazards associated with working conditions in the garment and other export manufacturing sectors are significant and well-documented, though largely invisible in the official data. The combination of extreme production pressure (with individual workers expected to meet output targets that leave no margin for rest or error), verbal and sometimes physical abuse by supervisors, fear of arbitrary dismissal, extremely long working hours during peak production periods, and the social isolation experienced by many workers who have migrated from rural areas to Dhaka or Chittagong creates conditions that are highly conducive to work-related psychological distress.

The 2025 Ordinance's introduction of provisions on psychological safety in the workplace represents an important first step toward bringing psychosocial hazards within the OSH regulatory framework, but the provisions are general in their terms and will require the development of detailed implementing regulations and guidance to be practically effective. The development of a regulatory approach to psychosocial hazards in Bangladesh should draw on the extensive international experience in addressing these hazards, including the EU's Framework Agreement on Work-Related Stress (2004), Australia's Model Work Health and Safety Regulations on psychosocial hazards (2022), and the UK's Workplace Stress Standards. Adapting these frameworks to the specific conditions of Bangladesh's industrial economy will require research into the prevalence and causes of work-related psychological distress in the major employment sectors, the development of sector-specific guidance on psychosocial risk assessment and management, and the training of inspectors and safety committee members in the recognition and assessment of psychosocial hazards.

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## CHAPTER SEVENTY-THREE: GLOBAL SUPPLY CHAIN GOVERNANCE AND THE INTERNATIONALISATION OF OSH LAW

### 73.1 The Architecture of Global Labour Governance: From Voluntary to Binding Frameworks

The governance of labour standards in global supply chains has undergone a fundamental transformation over the past decade, driven by the moral shock of Rana Plaza and the subsequent policy response at both the international and regional governance levels. Understanding this transformation is essential to any analysis of Bangladesh's OSH law, because the conditions of OSH governance in Bangladesh are now shaped not merely by domestic law and institutions but by a complex architecture of international and transnational governance mechanisms that interact with, supplement, and in some cases substitute for domestic regulation.

The evolution of global supply chain labour governance has moved through three distinct phases. The first phase, dominant from the 1990s through the mid-2000s, was characterized by the voluntary corporate social responsibility model: brands adopted codes of conduct articulating standards for their suppliers, and compliance was monitored through private social auditing. This

model, as the Rana Plaza disaster definitively demonstrated, was unable to address systemic safety failures in supplier factories, both because private audit firms lacked the independence, expertise, and authority to enforce genuine compliance, and because the commercial pressures that drove safety violations were themselves products of the buyer-supplier relationship that the auditing system left entirely unaddressed.

The second phase, initiated by the Accord on Fire and Building Safety in 2013 and now extended through the International Accord and its country programs, was characterized by legally binding commitments, independent inspection, and effective remediation requirements, representing a fundamental departure from the voluntarism of the first phase. This phase has produced significant safety improvements in the covered sector, but its coverage remains limited to factories producing for signatory brands, and its governance is still primarily a product of contractual commitments rather than public law obligations.

The third phase, now underway, is characterized by the progressive extension of binding public law obligations into the domain of supply chain safety governance, through legislative instruments such as the EU Corporate Sustainability Due Diligence Directive (CS3D, Directive 2024/1760), the French Loi de Vigilance (Law on Duty of Vigilance, 2017), the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, 2021), and the emerging Norwegian and Swiss due diligence legislation. These instruments impose obligations on companies headquartered or operating in their jurisdictions to conduct due diligence on human rights and environmental impacts throughout their supply chains, including the supply chains of their suppliers in countries like Bangladesh.

### 73.2 The EU Corporate Sustainability Due Diligence Directive and Its Implications for Bangladesh

The EU Corporate Sustainability Due Diligence Directive (CS3D), which was formally adopted as EU Directive 2024/1760 and is being progressively implemented by EU member states during the period 2025-2027, represents the most significant development in binding supply chain governance since the Rana Plaza Accord. The CS3D requires large companies operating in the EU to identify, prevent, mitigate, and account for adverse human rights and environmental impacts in their own operations and throughout their value chains, including the operations of their suppliers and sub-suppliers in third countries.

The CS3D's human rights provisions specifically encompass the right to just and favourable conditions of work, including occupational safety and health. Under the Directive, EU companies sourcing from Bangladesh must conduct systematic due diligence on the OSH conditions in their Bangladeshi supplier factories, including assessment of compliance with international OSH standards such as those set out in ILO Conventions Nos. 155, 187, and 190. Failure to conduct adequate due diligence, or failure to address identified OSH violations in their supply chains, exposes EU companies to civil liability for damages suffered by affected workers and to administrative sanctions.

The implications of the CS3D for Bangladesh's garment export sector are profound. Bangladesh is heavily dependent on EU market access for its garment exports, which account for

approximately 60 percent of total garment export value. EU buyers now face legal obligations to ensure OSH compliance in their Bangladeshi supplier factories, creating a powerful commercial incentive for those buyers to demand and verify genuine safety improvements, rather than relying on paper compliance with minimum standards. This commercial pressure, backed by legal liability, will significantly strengthen the external driver for OSH improvement in Bangladesh's export sector, complementing the domestic regulatory framework and the RSC's inspection programme.

At the same time, the CS3D creates challenges as well as opportunities for Bangladesh. If EU buyers' due diligence requirements become too costly or complex to satisfy for smaller or more informal suppliers, there is a risk that sourcing will concentrate in larger, more formalized factories that can demonstrate compliance more easily, with adverse effects on employment in smaller enterprises and on the workers who would lose jobs as a result. Managing this transition risk will require careful calibration of the CS3D's implementation requirements and the development of support mechanisms for smaller enterprises seeking to meet the new standards.

### 73.3 The ILO's Supervisory System and Bangladesh's Compliance Obligations

Bangladesh's ratification of ILO Conventions Nos. 155, 187, and 190 in November 2025 creates a comprehensive set of reporting and compliance obligations under the ILO's supervisory system. The ILO's supervisory system operates primarily through the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which reviews the periodic reports submitted by member states on the application of ratified conventions and issues observations and direct requests identifying areas of concern and requiring clarification or remedial action.

Under the standard ILO practice, Bangladesh will be required to submit its first report on the application of Conventions Nos. 155, 187, and 190 to the CEACR two years after ratification, that is by November 2027. Subsequent reports will be required at regular intervals. The CEACR's assessment of these reports will draw on information provided not only by the government but also by employers' and workers' organisations, and its observations will be publicly reported and widely disseminated.

The CEACR's observations on the application of ILO conventions in Bangladesh have historically been critical of a range of deficiencies in the country's labour law and practice, and the ratification of the three new conventions will significantly expand the scope of the Committee's scrutiny. In particular, the Committee's assessment of Bangladesh's compliance with Convention No. 155 will require it to evaluate not merely the formal provisions of the BLA 2006 and its amendments but the practical effectiveness of the OSH enforcement system, including the adequacy of DIFE's staffing and resources, the quality of the inspection regime, the functioning of the accident reporting and investigation system, and the effectiveness of the workers' compensation and employment injury schemes.

The ILO's technical cooperation programme with Bangladesh, which has provided substantial support for OSH capacity development over the post-Rana Plaza decade, will continue to be an important resource for implementing the requirements of the newly ratified conventions. The

ILO's Bangladesh country programme for 2025-2030 includes specific objectives related to OSH convention implementation, including technical assistance for the development of implementing legislation, support for DIFE capacity building, and assistance with the development of sector-specific OSH standards and guidance.

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## CHAPTER SEVENTY-FOUR: PHILOSOPHY OF PREVENTION: FROM COMPLIANCE TO CULTURE

### 74.1 The Safety Culture Paradigm and Its Application to Bangladesh

The concept of safety culture, which has become central to contemporary OSH management theory and practice, has a specific intellectual history that is worth tracing in some detail, because the emergence of this concept represents a significant philosophical shift in how organizational responsibility for occupational safety is understood. The concept emerged primarily from the analysis of major industrial disasters, including the Chernobyl nuclear accident of 1986, the explosion of the Space Shuttle Challenger in 1986, and the Piper Alpha oil platform disaster of 1988, in which independent investigators concluded that the disasters were attributable not merely to specific technical failures or individual human errors but to deeper organizational and cultural failures that created the conditions in which catastrophic accidents were predictable and, in retrospect, almost inevitable.

The Chernobyl Post-Accident Review Meeting conducted by the International Atomic Energy Agency in 1986 introduced the concept of "safety culture" into official discourse, defining it as that assembly of characteristics and attitudes in organizations and individuals which establishes that, as an overriding priority, nuclear plant safety issues receive the attention warranted by their significance. Subsequent academic work by Edgar Schein, Andrew Hopkins, Karl Weick, and many others has elaborated the concept of safety culture into a sophisticated framework for understanding how the values, beliefs, and behavioural norms that operate within an organization shape the actual safety decisions made by individuals at all levels of the organizational hierarchy.

The safety culture paradigm has important implications for OSH regulation because it identifies factors that lie beyond the reach of traditional compliance-based regulation. A factory whose management culture treats safety primarily as a compliance burden to be managed at minimum cost, whose supervisors respond to workers' safety concerns with dismissal or ridicule, whose workers have learned that raising safety issues is career-limiting, and whose entire operational logic is oriented toward maximizing throughput rather than maintaining safe conditions, may be formally compliant with every provision of the relevant OSH legislation and yet be a systemically dangerous workplace. The safety culture paradigm thus implies that effective OSH governance requires attention not merely to formal compliance but to the organizational cultures and management systems that determine how safety is actually managed in practice.

In Bangladesh's garment sector, the research evidence suggests that safety culture in most factories is still, despite the significant improvements of the post-Rana Plaza decade, fundamentally oriented toward production rather than safety. Research by the RSC, the ILO, and

independent academic researchers has consistently found that workers in covered factories, despite increased awareness of their right to refuse unsafe work in principle, remain reluctant to exercise this right in practice for fear of supervisory retaliation. Workers report that production pressure remains the dominant concern of supervisors and managers, and that safety committee meetings are frequently perfunctory or symbolic rather than a genuine forum for worker safety concerns.

Developing a genuine safety culture in Bangladesh's industrial sector requires a transformation that goes beyond legal compliance to encompass changes in management philosophy, supervisory behaviour, worker empowerment, and the commercial relationship between buyers and suppliers. The systems-based approach to OSH mandated by ILO Conventions Nos. 155 and 187 provides the regulatory framework for this transformation, but its effective implementation will require sustained investment in management capacity building, worker training, and the development of institutional channels through which workers can genuinely influence safety decisions without fear of retaliation.

### 74.2 The Role of Workers in Safety Governance: Empowerment, Voice, and Participation

The philosophical argument for worker participation in OSH governance rests on multiple foundations. Epistemically, workers possess knowledge about the specific hazards of their immediate work environment that employers and regulators cannot fully access through external observation: they know which machines are unreliable, which chemicals produce adverse symptoms, which supervisory practices create dangerous shortcuts, and which safety procedures are followed in form but not in substance. This epistemic advantage means that effective safety governance requires systematic mechanisms for capturing and acting on worker knowledge.

The republican political philosophy argument for worker participation in safety governance is grounded in the principle of non-domination: a worker who has no voice in the safety decisions that determine whether she returns home safely from work each day is paradigmatically subject to the arbitrary power of her employer, and her status as a non-dominated person in the workplace depends, in part, on her having genuine participation rights in safety governance. This is not merely an argument about effective outcomes; it is an argument about the dignity and agency of workers as persons rather than objects of management.

The capabilities approach provides a third perspective: the capability to participate in the decisions that affect one's working life, including decisions about safety, is an important component of the central capabilities that Martha Nussbaum argues are necessary for genuinely human functioning. A regulatory framework that reduces workers to passive objects of safety management, rather than active participants in safety governance, fails to respect their status as persons with agency and dignity.

The practical implementation of worker participation in OSH governance in Bangladesh requires attention to the specific obstacles that prevent meaningful participation in the current institutional context. The most significant of these obstacles are: fear of retaliation for raising safety concerns, which remains pervasive despite the formal protections against discriminatory dismissal in the BLA 2006; the low literacy of a significant proportion of the workforce, which limits access to

written safety information and formal complaint mechanisms; the lack of genuine union representation in many workplaces, which removes an important institutional channel for collective worker voice on safety issues; and the power imbalances within safety committees, which frequently result in worker representatives being unable to effectively challenge management decisions on safety matters.

Addressing these obstacles requires a combination of legal reforms and institutional developments. On the legal side, the protection against retaliation for workers who raise safety concerns needs to be strengthened and made more effectively enforceable, with the burden of proof shifted to the employer to demonstrate that adverse action against a worker was not motivated by the exercise of OSH rights. On the institutional side, safety committee members need to receive meaningful training in OSH principles and in their rights and responsibilities as committee members, and mechanisms need to be developed through which committee members can access independent advice and support when they encounter resistance from management.

### 74.3 The Intersection of OSH and Trade Union Rights: The Missing Connection

The relationship between trade union rights and occupational safety and health is one of the most firmly established findings of the empirical OSH literature: workplaces with active and genuinely representative trade unions have significantly better safety outcomes than comparable workplaces without them, across a wide range of industries and national contexts. The causal mechanisms through which unionization improves safety outcomes are multiple: unions negotiate explicit safety provisions in collective agreements, provide institutional channels for worker safety concerns, protect individual workers from retaliation for raising safety issues, and create a collective countervailing power that moderates the employer's tendency to prioritize production over safety.

The connection between OSH and trade union rights is thus not merely incidental; it is structural and essential. An effective OSH governance system cannot be built in the absence of genuine freedom of association and collective bargaining, because the organizational capacity of workers to collectively voice and act on safety concerns is a necessary complement to the state's regulatory and enforcement functions. This means that the reform of OSH law in Bangladesh cannot be fully effective without the concurrent reform of the collective labour law framework, which is the subject of Part Eleven of this work.

In Bangladesh's garment sector, the complex and contested state of union rights in the post-Rana Plaza period, including the significant improvement in union registration following the 2013 amendments to the BLA 2006 and the continued resistance of many employers to genuine collective bargaining, has directly affected the effectiveness of OSH governance. Factories with active unions have generally shown better safety outcomes than comparable factories without them, reflecting both the organizational capacity of unions to press safety concerns and the accountability effects of union monitoring of management safety practices. The extension and strengthening of union rights in the garment sector and beyond is thus not merely a matter of collective bargaining justice; it is an essential component of an effective OSH governance strategy.

# CHAPTER SEVENTY-FIVE: REFORMING BANGLADESH'S OSH LAW: A COMPREHENSIVE AGENDA

## 75.1 Principles for a Comprehensive OSH Reform Agenda

The preceding chapters of this Part have established the philosophical foundations, doctrinal architecture, historical development, institutional context, and comparative landscape of OSH law and governance in Bangladesh. The analysis reveals a system that, despite significant improvements over the post-Rana Plaza decade and the historic commitments of 2025, still falls substantially short of the standards required to adequately protect the safety and health of Bangladesh's eighty million workers. A comprehensive reform agenda must be built on clear philosophical principles that reflect the jurisprudential insights of this analysis.

The first principle is universality: the right to a safe and healthy working environment is a fundamental human right that is not contingent on a worker's formal employment status, sector, or contract type. The reform agenda must pursue the extension of OSH protection to all workers, including agricultural workers, construction workers, domestic workers, gig workers, informal economy workers, and others currently excluded from the formal regulatory framework, through a phased programme of legislative extension accompanied by the development of regulatory frameworks adapted to the specific conditions of different forms of work.

The second principle is prevention: the primary purpose of OSH regulation is to prevent workplace harm before it occurs, not merely to compensate for it after the fact. The reform agenda must strengthen the preventive framework by requiring systematic risk assessment as a condition of operation, strengthening the requirement for OSH management systems in all covered enterprises, investing in the development of a genuine preventive safety culture in Bangladesh's major industries, and expanding the reach of participatory safety governance through strengthened safety committees and trade union rights.

The third principle is accountability: those responsible for workplace harm, whether employers who maintain unsafe conditions, corporations that create commercial pressures that drive safety shortcuts, or state institutions that fail to enforce safety standards, must be held genuinely accountable for the consequences of their decisions. The reform agenda must strengthen the enforcement framework through increased inspection capacity, enhanced penalty provisions, effective criminal liability for serious OSH violations, and the development of supply chain accountability mechanisms aligned with emerging international standards such as the CS3D.

The fourth principle is participation: effective OSH governance requires genuine worker participation in safety decision-making at every level, from the workplace safety committee to the national regulatory policymaking process. The reform agenda must strengthen the legal and institutional framework for worker participation in OSH governance, protect workers from retaliation for raising safety concerns, and invest in the capacity of workers and their organizations to participate effectively in safety governance.

The fifth principle is integration: OSH cannot be governed effectively in isolation from the broader framework of labour rights and social protection. The reform agenda must recognize and address the interdependencies between OSH, collective labour rights, wage policy, social insurance, and health system development, and must pursue OSH improvements within an integrated approach to decent work governance.

## 75.2 Legislative Reform: The Next Generation of OSH Law

The Bangladesh Labour (Amendment) Ordinance, 2025, while representing a significant advance, should be understood as the beginning of a legislative reform process rather than its conclusion. The Ordinance's OSH provisions require substantial elaboration through implementing regulations, and several major legislative gaps remain that will require further statutory intervention.

The most important immediate legislative priority is the development of comprehensive implementing regulations for the reformed OSH provisions of the BLA 2006 as amended by the 2025 Ordinance. These regulations should address, at a minimum: detailed technical standards for OSH management systems, including requirements for risk assessment, hazard identification, control planning, monitoring, and review; sector-specific OSH standards for the major high-risk sectors of the economy, beginning with garments, construction, shipbreaking, and agriculture; ergonomic standards for sedentary work, particularly relevant to the garment sector; standards for psychosocial risk assessment and management, implementing the Ordinance's new provisions on psychological safety; and detailed standards for the composition, functions, and powers of workplace safety committees.

The medium-term legislative agenda should include the development of a standalone Occupational Safety and Health Act that would consolidate the OSH provisions currently dispersed across the BLA 2006, the Mines Act, the Merchant Shipping Ordinance, and other instruments into a coherent, principled, and comprehensive legislative framework. Such a standalone Act, modelled on the systems-based approaches adopted in the UK, Australia, New Zealand, and the Nordic states, would provide a firmer foundation for the development of a coherent national OSH system than the current fragmented legislative architecture allows.

The standalone OSH Act should incorporate: a general duty provision imposing on all persons who control workplaces a duty to ensure, so far as is reasonably practicable, the safety and health of all persons at the workplace; a specific duty on employers to conduct systematic risk assessments and to implement and maintain OSH management systems; a duty on workers to cooperate with the employer's safety arrangements and to use safety equipment provided; provisions for workplace health and safety representatives with protected rights to conduct inspections, investigate accidents, and participate in safety decisions; enhanced criminal liability provisions for serious OSH violations, including corporate criminal liability; and civil liability provisions allowing workers injured by OSH violations to seek compensation directly from the party responsible for the violation.

## 75.3 Institutional Reform: Building the Regulatory Infrastructure for Effective Enforcement

The most critical institutional reform priority is the substantial expansion and transformation of DIFE from its current character as a reactive, compliance-monitoring bureaucracy into a proactive, systems-based safety regulator with the capacity, independence, and institutional culture necessary to enforce the reformed OSH framework effectively.

This transformation requires, first, a substantial increase in DIFE's budget and staffing. The Labour Reform Commission's recommendation of increasing the number of active inspectors to achieve a ratio of 1 inspector per 40 covered establishments, in line with ILO standards, represents a minimum target. Achieving this ratio in Bangladesh's context will require recruiting and training several thousand additional inspectors over the next five years, together with the development of the training infrastructure necessary to ensure that newly recruited inspectors have the technical competence required for modern OSH inspection. The NOHSTRI in Rajshahi should be developed into the institutional home for a comprehensive OSH inspector training programme, with a curriculum that covers systems-based OSH management, risk assessment, sector-specific technical standards, investigation of accidents and occupational disease, and the legal framework for enforcement.

Second, DIFE's institutional structure should be reformed to create specialist inspection units for the major industrial sectors, with inspectors who have sector-specific technical expertise rather than a generalist approach that cannot adequately address the complex hazards of modern industrial production. Priority sector units should be established for: the ready-made garments and textile sector, the construction sector, the shipbreaking sector, the chemical manufacturing and handling sector, and the agricultural sector.

Third, the relationship between DIFE and the RSC should be formalized through a statutory framework that recognizes the RSC's inspection activities and outcomes as official regulatory data, establishes clear protocols for information sharing and coordinated enforcement, and defines the respective roles and responsibilities of the two institutions in ensuring OSH compliance in the covered sector. This formalization should preserve DIFE's ultimate regulatory authority while acknowledging the RSC's superior capacity for technical safety assessment in the garment sector.

Fourth, an independent OSH regulatory authority, analogous to the independent regulatory agencies established in other regulatory domains, should be established with responsibility for developing and reviewing OSH standards, conducting strategic safety research, and providing oversight of DIFE's enforcement activities. This authority should have a governance structure that ensures genuine independence from political pressure, including fixed-term appointments, transparent appointment processes, and financial independence from the Ministry of Labour and Employment.

### 75.4 Addressing the Compensation and Social Insurance Gap

The reform of Bangladesh's compensation framework for occupational injury and disease represents one of the most urgent and philosophically significant dimensions of the OSH reform agenda. The existing workers' compensation system under Part XII of the BLA 2006, for all the

reasons analysed in Chapter Sixty-Eight, provides grossly inadequate and largely inaccessible compensation to injured workers and their families.

The Employment Injury Scheme (EIS), formally established by the 2025 Ordinance and currently operational as a pilot in the garment sector, represents the most important institutional innovation in this area, and its nationwide extension should be a priority reform objective. The nationwide extension of the EIS requires: the development of a sustainable financing mechanism, including the determination of contribution rates for employers and the government and the establishment of a transparent fund management framework; the development of administrative capacity for benefit assessment, claims processing, and rehabilitation services across the country; the extension of EIS coverage beyond the formal manufacturing sector to include informal economy workers, in line with the universality principle articulated above; and the integration of the EIS with the broader social protection system, including health insurance and disability benefits.

The compensation amounts under the EIS need to be calibrated to provide genuine income replacement for injured workers, rather than the token amounts that characterize the existing workers' compensation schedule. Research on the appropriate calibration of compensation amounts should draw on comparative experience from countries with well-developed employment injury insurance systems, including Germany's statutory accident insurance (Berufsgenossenschaft system), the Nordic social insurance models, and the Japanese labour accident compensation insurance system. The ILO's Social Security (Minimum Standards) Convention (No. 102) and Employment Injury Benefits Convention (No. 121) provide the international standards framework within which the reform should be situated.

### 75.5 Building the Knowledge Infrastructure: Data, Research, and Surveillance

Effective OSH governance requires reliable data on the scale, nature, and causes of occupational injury and disease. Bangladesh's current OSH data infrastructure is entirely inadequate: the official accident reporting system covers only a small fraction of actual workplace injuries and deaths, occupational disease is almost entirely invisible in official statistics, and the data that does exist is collected through systems that are fragmented, inconsistent, and poorly adapted to the needs of policy analysis and evidence-based regulation.

The development of a comprehensive occupational injury and disease surveillance system is an essential infrastructure investment for the OSH reform agenda. Such a system should encompass: mandatory real-time reporting of all fatal and serious workplace injuries to DIFE through the LIMA digital platform; mandatory periodic reporting of all work-related injuries, regardless of severity, through a standardized reporting system; mandatory medical reporting of occupational diseases through a national occupational disease register maintained by the Ministry of Health in collaboration with DIFE and NOHSTRI; routine data collection on occupational health in national health surveys, including questions on work-related injuries, symptoms of occupational disease, exposure to specific hazards, and access to occupational health services; and systematic collection of data on near-miss incidents and hazardous conditions through the safety committee system.

The data collected through this system should be made publicly available in disaggregated form, allowing analysis by sector, region, enterprise size, worker characteristics (including gender, age, and employment status), and type of hazard. Transparent public reporting of occupational injury and disease data performs an important accountability function, creating reputational incentives for employers to improve their safety performance and providing evidence of where regulatory intervention is most urgently needed.

NOHSTRI should be developed into the national centre for OSH research, with a programme of applied research addressing the most significant OSH challenges in Bangladesh's economy. Priority research areas should include: the prevalence and causes of work-related musculoskeletal disorders in the garment sector; the burden of occupational disease, particularly among workers in the chemical, leather, and agricultural sectors; the effectiveness of different approaches to OSH training and safety culture development; the relationship between supply chain governance mechanisms and factory safety outcomes; and the comparative effectiveness of different enforcement strategies for OSH compliance.

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## CHAPTER SEVENTY-SIX: JURISPRUDENTIAL REFLECTIONS ON OSH LAW: BETWEEN RIGHTS, RISK, AND RESPONSIBILITY

### 76.1 The Transformation of Risk Theory in the Twenty-First Century: New Directions

The philosophy of risk as applied to occupational safety has continued to evolve rapidly in the 2020s, responding to new empirical findings about the nature of organizational risk, new political-philosophical arguments about the ethics of risk distribution, and new developments in the governance of global supply chains. Three intellectual currents in the recent literature deserve particular attention for their implications for the development of OSH law in Bangladesh.

The first is the emergence of what might be called "structural injustice" theory in the philosophy of risk, associated most prominently with the work of Iris Marion Young and its elaboration by scholars such as Archon Fung and David Weil. Young's concept of structural injustice, developed in her posthumously published book Responsibility for Justice (2011), holds that the responsibility for preventing unjust outcomes should rest not merely on those who directly cause those outcomes but on all those who participate in the social structures that produce them. Applied to the global garment supply chain, structural injustice theory implies that the responsibility for preventing the workplace deaths and injuries that are produced by the structure of global production extends beyond the factory owner who maintains an unsafe building to include the brands that source from that factory, the consumers who buy the resulting products, the states that fail to adequately regulate the factories, and the international institutions that design the trade and economic frameworks that create the conditions for competitive cost-cutting.

This structural injustice analysis was anticipated, in some respects, by the Accord's innovative architecture, which built financial responsibility for safety remediation into the contractual obligations of brands, reflecting the principle that those who benefit from global production bear

a share of the responsibility for the conditions in which that production occurs. But the structural injustice analysis goes further, implying that responsibility extends to the entire architecture of global production, including trade policy, development finance, and consumer behaviour.

The second intellectual current is the growing engagement of OSH philosophy with the insights of environmental risk governance, particularly the precautionary principle. The precautionary principle, articulated in international environmental law through instruments such as the Rio Declaration (Principle 15) and the Cartagena Protocol on Biosafety, holds that where there are threats of serious or irreversible harm, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation. Adapted to the OSH context, the precautionary principle would imply that employers and regulators should not wait for definitive scientific proof of the causal connection between a working condition and an adverse health outcome before taking preventive action; where there is reasonable scientific evidence of a potential hazard, the duty of care requires precautionary intervention.

The application of the precautionary principle to OSH regulation has been resisted by some economists and industry representatives on the grounds that it imposes costs in the absence of proven risk and may cause more harm than good by diverting resources from more clearly established priorities. But the case for the precautionary approach in OSH is strengthened by the nature of occupational disease: because occupational disease typically develops slowly, over years or decades, and because the causal connection between occupational exposure and disease is frequently difficult to establish with scientific certainty before significant harm has occurred, waiting for definitive proof before acting may mean waiting until thousands of workers have suffered preventable harm. The precautionary principle thus has a natural application in OSH regulation, particularly for chemical hazards, where the range of potentially harmful substances is vast and the time required to establish definitive proof of harm is often longer than an individual worker's occupational career.

The third intellectual current is the application of behavioral economics insights to OSH regulation, drawing on the psychological research of Daniel Kahneman, Amos Tversky, and their collaborators on decision-making under uncertainty and the role of cognitive biases in the assessment and management of risk. Behavioral economics research has shown that human beings are systematically poor at assessing low-probability, high-consequence risks of the kind that characterize many workplace hazards, and that the decisions of both employers and workers about safety investments and risk acceptance are significantly influenced by cognitive biases including optimism bias (the tendency to believe that bad things will happen to others but not to oneself), availability bias (the tendency to assess probability by the ease with which examples come to mind), and loss aversion (the tendency to weight losses more heavily than equivalent gains, which can paradoxically lead to inadequate safety investment if safety improvements require upfront costs with uncertain future benefits).

These behavioral economics insights have significant implications for the design of OSH regulation. They suggest that purely information-based approaches to safety improvement, which assume that employers and workers will make rational decisions once they have accurate information about risks, are insufficient, because the cognitive biases that distort risk assessment operate even when information is available. More effective regulatory design may require the use

of default rules (such as requiring risk assessment as a condition of operation rather than merely permitting it), framing effects (such as presenting safety requirements as loss prevention rather than cost imposition), and social norms interventions (such as publicizing comparative safety performance data to create reputational pressure for safety improvement).

### 76.2 Comparative OSH Jurisprudence: Lessons from Advanced Regulatory Systems

Bangladesh's OSH reform agenda can benefit from careful engagement with the experience of jurisdictions that have achieved substantially higher levels of OSH protection than Bangladesh currently enjoys. The comparative analysis of OSH law is a well-developed field in international labour law scholarship, and several specific regulatory approaches deserve attention for their potential relevance to the Bangladeshi context.

The German system of statutory accident insurance (Berufsgenossenschaft or BG system) is widely regarded as one of the most effective OSH governance systems in the world, characterized by a combination of mandatory social insurance for occupational injury, independent employer-financed mutual associations responsible for both prevention and compensation, comprehensive technical standards development, and a strong emphasis on rehabilitation alongside compensation. The BG system's integration of prevention and compensation functions within a single institutional framework creates powerful incentives for investment in prevention, because reducing the incidence of occupational injury reduces the cost of the insurance fund that the employer contributes to. This alignment of financial incentives with safety objectives is a distinctive feature of the German model that Bangladesh's reform of the EIS might consider incorporating.

The Nordic OSH systems, particularly those of Sweden and Finland, are characterized by a strong emphasis on work environment management rather than mere compliance with specific technical standards, mandatory consultation of workers on OSH matters as a legal right, a comprehensive network of occupational health services that are integrated with the general health system, and a culture of social dialogue that extends to OSH governance as a matter of course. The Swedish Work Environment Act's emphasis on the employer's duty to systematically investigate, continuously assess, and actively address risks in the work environment, rather than merely complying with a checklist of minimum standards, represents a philosophical approach to OSH regulation that Bangladesh's standalone OSH Act should aspire to incorporate.

Australia's Work Health and Safety legislative framework, which was developed through a harmonization process in the early 2010s and has been progressively refined since, provides another useful comparator. The Australian model's adoption of a "primary duty of care" that extends to all persons who carry out work, regardless of their employment status, represents an approach to the challenge of regulating diverse forms of work that is directly relevant to Bangladesh's challenge of extending OSH coverage beyond the formal employment relationship. The Australian model's provisions on worker consultation, including the right of workers to elect health and safety representatives with protected rights to investigate hazards, accompany inspectors, and issue provisional improvement notices, provide a sophisticated framework for participatory safety governance that Bangladesh's reform should study carefully.

## 76.3 The Political Economy of OSH Reform: Interests, Coalitions, and Pathways to Change

The analysis of this Part has repeatedly revealed the ways in which the political economy of OSH governance, the distribution of power and interest among employers, workers, state institutions, global buyers, and international governance actors, shapes the translation of formal legal reform into practical safety improvement. A realistic assessment of the prospects for the comprehensive OSH reform agenda developed in this Part requires attention to the political conditions that determine whether progressive legal change can be implemented effectively.

The political transformation catalysed by the July 2024 revolution and the formation of the interim government under Professor Muhammad Yunus created an extraordinary window of opportunity for OSH reform, in which the political coalition of convenience between the reform-minded interim government, organized labour, the international donor community, and global brands committed to the Accord model produced the most ambitious programme of OSH legal reform in Bangladesh's history. The ratification of ILO Conventions Nos. 155, 187, and 190 in November 2025 and the promulgation of the 2025 Ordinance represent the most tangible achievements of this window of opportunity.

The challenge for the post-2026 democratic government is to sustain, implement, and extend this reform momentum in the face of the political and economic pressures that have historically constrained OSH governance in Bangladesh. These pressures include: the powerful commercial interests of the employer class in the garment and other sectors, who benefit from weak enforcement and resist the costs of genuine safety compliance; the fiscal constraints of a government with limited revenues and multiple competing priorities for public expenditure; the administrative capacity limitations of a civil service that lacks the technical expertise and institutional culture necessary for sophisticated regulatory governance; and the global competitive pressures that create incentives for Bangladesh to compete on cost rather than standards.

The most promising pathway to sustained OSH improvement in Bangladesh runs through the alignment of domestic reform interests with external governance pressures, particularly the requirements of the EU's CS3D and the international scrutiny created by Bangladesh's new ILO convention obligations. The CS3D creates powerful commercial incentives for EU-sourcing brands to demand genuine OSH improvements from their Bangladeshi suppliers, while the ILO's supervisory system creates international accountability for the implementation of the ratified conventions. These external pressures, combined with the domestic political demand for workers' rights that the July 2024 revolution expressed, create a more favourable political environment for OSH reform than Bangladesh has previously experienced.

Building and sustaining a reform coalition requires the active engagement of multiple institutional actors: trade unions, which provide the organizational infrastructure for collective worker voice on safety issues and the political counterweight to employer resistance; civil society organisations, including the labour rights organisations, legal aid providers, and occupational health advocates who provide crucial services and advocacy; academic and research institutions, including NOHSTRI and Bangladesh's universities, which provide the knowledge base for evidence-based reform; international partners, including the ILO, IOSH, the

International Accord, and bilateral donors, whose technical assistance and funding are essential for institutional capacity development; and progressive elements within the employer community, including those brands and factory owners who recognize that genuine safety improvement is compatible with competitive economic performance and who can serve as exemplars and advocates within the business community.

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## CHAPTER SEVENTY-SEVEN: THE ROAD AHEAD FOR OSH LAW IN BANGLADESH

### 77.1 Immediate Priorities for Implementation

The historic commitments of 2025, including the ratification of ILO Conventions Nos. 155, 187, and 190 and the promulgation of the Bangladesh Labour (Amendment) Ordinance, 2025, have created a transformed legal and institutional landscape for OSH governance in Bangladesh. The immediate priority for the post-2026 democratic government is to translate these formal commitments into practical reality through a sustained programme of implementation.

The most urgent implementation priorities are: the development of implementing regulations for the OSH provisions of the 2025 Ordinance, including detailed technical standards, sector-specific regulations, and procedural rules for safety committees and complaints mechanisms; the substantial expansion of DIFE's inspection capacity, including the recruitment and training of additional inspectors, the creation of specialist sector units, and the provision of adequate resources and independence for effective enforcement; the formalization of the co-regulatory framework between DIFE and the RSC through a statutory framework that clarifies the respective roles and responsibilities of the two institutions; the nationwide extension of the Employment Injury Scheme, building on the lessons of the garment sector pilot; and the development of a comprehensive occupational injury and disease surveillance system, drawing on the LIMA digital platform and integrating with the national health information system.

These are achievable priorities in the short to medium term, given adequate political will, institutional commitment, and resource allocation. They do not require the development of new legislation, because the legislative foundation has been substantially advanced by the 2025 Ordinance; they require the executive action and institutional investment necessary to give that legislation practical effect.

### 77.2 The Long-Term Vision: Bangladesh as a Model of OSH Governance for the Developing World

The analysis of this Part has revealed both the depth of the challenge and the genuine opportunities for transformative progress in OSH governance in Bangladesh. The country's experience over the post-Rana Plaza decade demonstrates that significant improvements in safety outcomes are achievable, even in a context of intense commercial pressure, institutional weakness, and political economy obstacles, when there is a combination of binding legal

commitments, credible enforcement, genuine worker participation, and aligned international governance pressure.

Bangladesh's trajectory since 2013, from one of the world's most dangerous garment-producing countries to a country that has ratified all eleven fundamental ILO instruments and is implementing a sophisticated programme of OSH institutional reform, is a story of institutional learning, political mobilization, and gradual but genuine transformation. The country's experience provides lessons that are valuable not only for Bangladesh itself but for the many other developing countries facing similar challenges of OSH governance in export manufacturing sectors: the critical importance of binding commitments over voluntary pledges, the essential role of worker participation and genuine union rights in safety governance, the transformative potential of aligned international pressure from both regulatory and commercial sources, and the need for sustained institutional investment in the knowledge and enforcement infrastructure of effective OSH regulation.

The vision that should animate Bangladesh's OSH reform agenda is not merely the achievement of international minimum standards but the development of an OSH governance system that is genuinely fit for purpose in Bangladesh's specific economic, social, and institutional context, one that provides effective protection for all workers regardless of their employment status or sector, that builds genuine preventive safety culture in Bangladesh's major industries, that holds employers accountable through effective enforcement, and that treats workers as rights-holders with agency and dignity rather than as objects of regulatory management. This vision, ambitious as it is, is achievable. The legal and institutional building blocks are now largely in place, the political environment has never been more favourable for reform, and the evidence of what is achievable when genuine commitment is combined with effective institutional support is provided by the improvements already achieved in the garment sector. The task for the next decade is to extend and deepen this transformation across the full breadth of Bangladesh's working population.

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## BIBLIOGRAPHIC NOTES FOR PART TEN

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*End of Part Ten*

*Part Eleven of this work will examine the law of collective labour relations in Bangladesh, including the legal framework for trade union formation, recognition, and collective bargaining, the law of industrial disputes and their resolution, and the regulation of strikes and lockouts. Building directly on the analysis in Part Ten of the relationship between trade union rights and occupational safety and health governance, Part Eleven will examine the philosophical foundations of the right to organize and bargain collectively, the colonial inheritance and*

*postcolonial development of collective labour law in Bangladesh, the doctrinal architecture of the BLA 2006's collective labour provisions, the transformative reforms introduced by the 2025 Ordinance, and the persistent practical obstacles to effective collective organization in Bangladesh's major industries. The analysis will situate Bangladesh's collective labour law within the framework of ILO Conventions Nos. 87 and 98 on freedom of association and the right to organize and collectively bargain, which Bangladesh has ratified, and will examine the continuing tension between the formal legal framework and the practical reality of collective labour relations in an economy shaped by global supply chain pressures, state ambivalence toward independent worker organization, and the structural vulnerabilities of the predominantly female garment workforce. Part Eleven will develop a comprehensive reform agenda for collective labour law in Bangladesh grounded in the republican and human rights jurisprudential frameworks developed throughout this work.*

## PART ELEVEN: CHILD LABOUR, FORCED LABOUR, AND THE PROTECTION OF VULNERABLE WORKERS IN BANGLADESH: PHILOSOPHY, LAW, HISTORY, CATASTROPHE, AND THE ARCHITECTURE OF REFORM

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### PREFATORY NOTE TO PART ELEVEN

This part of the textbook addresses what is perhaps the most morally urgent and philosophically rich terrain of the entire work: the law governing child labour, forced labour, and the special vulnerability of certain categories of workers who occupy the most precarious and exploited positions within Bangladesh's labour market. The subjects treated here sit at the intersection of human rights law, development economics, postcolonial politics, feminist theory, international law, and domestic constitutional jurisprudence. They resist easy treatment and resist, above all, the kind of technocratic optimism that confuses the enactment of good laws with the achievement of good outcomes.

Bangladesh has made significant formal progress in constructing a legal framework for the prohibition and regulation of child labour and forced labour. It has ratified all ten fundamental ILO conventions, including Convention No. 138 on Minimum Age (ratified in March 2022), Convention No. 182 on the Worst Forms of Child Labour (ratified earlier), and, most recently in November 2025, Conventions Nos. 155, 187, and 190 on occupational safety and health and violence and harassment. The Bangladesh Labour Act (Amendment) Ordinance, 2025, promulgated on 17 November 2025 by the interim government under Chief Adviser Professor Muhammad Yunus, has introduced sweeping changes to 90 sections of the parent Act. These developments represent genuine and important progress.

Yet the persistence of child labour across Bangladesh's informal economy, the ongoing vulnerability of domestic workers who remain outside meaningful legal protection, the documented realities of forced labour in certain industries and supply chains, and the structural poverty that drives families to send children to work rather than school: all of these realities demand a sober and critical engagement that goes beyond celebration of legislative

achievements. This part attempts to provide that engagement, drawing upon the full range of philosophical, jurisprudential, historical, and empirical resources that the subject demands.

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## CHAPTER ONE: THE PHILOSOPHICAL AND JURISPRUDENTIAL FOUNDATIONS OF CHILD LABOUR LAW

### 1.1 The Child as a Subject of Law: Conceptual and Philosophical Preliminaries

The legal regulation of child labour rests upon a set of foundational philosophical claims about the nature of childhood, the capacity and vulnerability of children, the relationship between children and their families, and the proper role of the state in protecting those who cannot fully protect themselves. These foundational claims are contested in important ways, and the contestation is not merely academic. The way in which we conceptualize childhood, agency, and vulnerability has direct implications for the shape of legal regulation and for the evaluation of existing frameworks.

The dominant philosophical tradition in Western liberal thought has conceptualized the child as a being in a process of becoming, an incomplete person who is in the process of developing the capacities of reason, autonomy, and self-determination that are the hallmarks of full moral and legal personhood. This developmental conception of childhood, associated with the Enlightenment and given its most influential philosophical articulation by John Locke and Jean-Jacques Rousseau, carries with it a particular set of implications for legal regulation. If the child is characterized by developmental incompleteness, by a lack of the cognitive and emotional capacities necessary for genuine autonomous choice, then the child cannot meaningfully consent to the conditions of its own employment. The child worker is, on this account, not a freely contracting agent but a person whose formal legal capacity to work is constrained by the substantive reality of developmental incapacity. This is the philosophical foundation for the minimum age requirement in labour law: the law sets a threshold below which no contract of employment can be validly formed, not because the child cannot factually perform work, but because the child cannot meaningfully consent to the terms and consequences of employment.

This liberal-developmental conception of childhood has been significantly complicated by several strands of philosophical critique. The capability approach, developed by Amartya Sen and elaborated for application to children by Martha Nussbaum, offers a more nuanced framework that focuses on whether children are able to develop and exercise the central human capabilities including education, play, health, and social engagement rather than whether they have already achieved some threshold of rationality. On this account, child labour is wrong not primarily because children lack rational capacity but because it deprives them of the conditions necessary for the development of central capabilities. The child who works long hours in hazardous conditions is denied not only present welfare but future capacity: the capacity to lead a fully human life. This capability-based critique of child labour is more attentive to the contextual and structural factors that drive child labour, and it points toward a set of policy responses that address not only the prohibition of child labour but the provision of the conditions, education, health, social protection, that make that prohibition practically effective.

A third philosophical framework, associated with the children's rights tradition and given international expression in the United Nations Convention on the Rights of the Child (UNCRC) of 1989, to which Bangladesh is a party, conceptualizes children not merely as objects of adult protection but as subjects with their own rights, including the right to participate in decisions affecting them, the right to have their views taken into account, and the right to have their best interests treated as a primary consideration. The UNCRC's concept of the "evolving capacities of the child" represents an attempt to navigate between the developmental conception, which might be used to deny children all agency, and a premature attribution of adult autonomy that would expose children to exploitation. The evolving capacities doctrine holds that as children develop, they acquire greater capacity for autonomous decision-making, and the law should respond to this development by progressively expanding children's agency while maintaining protections appropriate to their developmental stage.

The tension between these philosophical frameworks has important practical implications in the Bangladesh context. The Bangladesh Labour Act, 2006, as amended, sets the minimum age for employment at fourteen years and prohibits children below fourteen from working in any capacity. It permits adolescents between fourteen and eighteen to work in non-hazardous occupations under certain conditions. This graduated approach reflects the influence of the evolving capacities doctrine, but its practical operation is deeply problematic in a context where millions of children below fourteen are engaged in labour in the informal economy, where enforcement is chronically weak, and where poverty drives families to rely on children's economic contributions.

The Bangladeshi legal framework's engagement with the philosophical question of child agency is particularly interesting in relation to the category of "light work" and "family enterprise" work. Both the Bangladesh Labour Act and international standards under ILO Convention No. 138 permit certain exceptions to the minimum age requirement for light work and for work within family enterprises. These exceptions reflect a philosophical recognition that not all work performed by children constitutes harmful exploitation: a child who helps in the family's rice harvest is in a fundamentally different situation from a child who is bonded to a brick kiln owner and forced to work under hazardous conditions. But the exceptions also create significant loopholes, and the distinction between permissible family enterprise work and impermissible exploitation is easily manipulated in contexts where enforcement capacity is limited and where informal labour arrangements are the norm.

### 1.2 Theories of Exploitation and Their Application to Child Labour

The concept of exploitation is central to the moral critique of child labour, but it is also philosophically contested. In the Marxist tradition, exploitation is understood as the extraction of surplus value: the appropriation of the product of the worker's labour beyond what is necessary to reproduce the worker's own labour power. On this account, child labour is exploitative in precisely the same way that adult wage labour is exploitative, except that the exploitation is compounded by the child's developmental vulnerability. But Marxist exploitation theory does not by itself provide a full account of what is wrong with child labour, because it focuses on the economic dimension of exploitation and does not adequately theorize the developmental harms that are specific to the exploitation of children.

Alan Wertheimer's analytical philosophical account of exploitation identifies the essential features of an exploitative transaction: one party takes unfair advantage of another's vulnerability in a way that is harmful to the exploited party, even though the exploited party may formally consent. Applied to child labour, this analysis highlights the structural conditions that generate child labour: poverty, lack of educational alternatives, family economic desperation, and employer willingness to benefit from these conditions. The child labourer is exploited not only because he or she is paid less than adult workers or subjected to worse conditions, but because the entire social structure that forces families to send children to work rather than school constitutes a form of structural injustice that makes the child's "consent" to work meaningless.

Ruth Sample's account of exploitation emphasizes that exploitation involves treating persons as mere means to one's ends, failing to respond appropriately to their needs and interests, and taking advantage of their vulnerabilities in ways that degrade their status as persons. This account connects exploitation theory to the Kantian tradition and provides a useful framework for understanding what is wrong with child labour beyond the economic dimension. The employer who hires a child in a hazardous occupation treats that child not as a person with developmental needs and a future to be protected but as a cheap and disposable source of labour power. The degradation of the child's personhood, not merely the economic harm, is what makes child labour a serious moral wrong.

Joel Feinberg's account of harm and setback to interests provides another philosophical tool for the analysis of child labour. Feinberg distinguishes between harm understood as a setback to a person's interests and wrong understood as a violation of a person's rights. Child labour typically involves both: it sets back the child's immediate and future interests, including interests in education, health, safety, and development, and it violates the child's rights, as recognized in the UNCRC and in international labour standards. Feinberg's account also introduces the concept of "future-oriented interests" or the interests of the person that the child will become, which are set back by child labour even when the child may not currently experience the work as harmful. The child who drops out of school to work in a brick kiln may not fully appreciate the long-term consequences of that decision, but those consequences, reduced lifetime earnings, poorer health, diminished life prospects, are real harms to the adult that the child will become.

### 1.3 The Republican Framework: Domination, Vulnerability, and the Freedom of the Child Worker

The republican philosophical tradition, as developed by Philip Pettit and applied to labour law by Alan Bogg, John Fudge, and others, conceptualizes freedom as non-domination: the condition of not being subject to the arbitrary will of another. Domination, on Pettit's account, occurs when one person has the capacity to interfere arbitrarily with another's choices and actions, regardless of whether that capacity is actually exercised. The dominated person lives under the shadow of another's power, subject at any moment to arbitrary interference.

Applied to child labour, the republican framework generates a powerful critique that goes beyond the exploitation framework. The child labourer is dominated in a double sense: first, by the employer or labour contractor who controls the conditions of work and can arbitrarily alter or terminate the child's employment; second, by the structural conditions of poverty and social

vulnerability that generate the child's dependency on the employer in the first place. Republican theory suggests that the law's task is not merely to prohibit the most egregious forms of child labour but to create the structural conditions under which children are genuinely free from domination: conditions that include effective education, social protection, family income support, and meaningful enforcement of labour standards.

The republican framework is particularly illuminating in relation to the situation of bonded child labourers in Bangladesh, who work in conditions of explicit debt bondage, unable to leave the workplace until a debt incurred by their parents or themselves has been repaid. These children represent an extreme case of domination: they are literally imprisoned in their workplace by a combination of legal obligation and physical coercion. But the republican analysis also extends to the situation of children who are technically "free" to leave their employment but practically unable to do so because of the economic desperation of their families, the absence of educational alternatives, or the threat of physical violence. The republican concept of freedom as non-domination is thus significantly more demanding than the formal legal concept of free contract: it requires not only the absence of legal coercion but the presence of real alternatives and genuine capacity for self-determination.

### 1.4 Feminist Perspectives on Child Labour: Gender, Vulnerability, and the Politics of Care

Feminist scholarship on child labour has made several important contributions to the philosophical and jurisprudential analysis of the field. First, feminist scholars have highlighted the gendered dimensions of child labour, showing that the pattern of child labour in Bangladesh and similar contexts is deeply shaped by gender norms and the gendered division of labour. Girl children are disproportionately engaged in domestic labour, including work in other people's households, and in the informal economy. Boy children are more likely to be found in the formal sector and in industrial child labour. The different patterns of child labour experienced by girls and boys reflect broader patterns of gender inequality, and any adequate analysis of child labour law must attend to these gendered dimensions.

Second, feminist care ethics, associated with Carol Gilligan, Nel Noddings, and Virginia Held, provides a framework for thinking about children's vulnerability and the obligations of care that flow from it. Care ethics holds that relationships of dependency and vulnerability generate special moral obligations, and that the appropriate response to vulnerability is not merely the protection of abstract rights but the provision of genuine care and nurturing. Applied to child labour law, care ethics suggests that the law must do more than prohibit harmful work: it must create and sustain the conditions of care, including accessible education, healthcare, family support, and social protection, that make genuine childhood possible for all children regardless of their family's economic position.

Third, feminist political economy, as developed by Diane Elson, Jeanne Penvenne, and others, insists that the persistence of child labour in Bangladesh and similar contexts cannot be understood without attention to the macroeconomic structures that generate and sustain poverty, including the global value chain structure of the garments industry, the fiscal policies of international financial institutions, and the gendered division of reproductive labour that keeps women and their children in conditions of persistent economic vulnerability.

## 1.5 The Jurisprudence of Child Rights: From Protection to Participation

The international children's rights framework, centred on the UNCRC, has undergone significant theoretical development since its adoption in 1989. The early reception of the UNCRC in legal scholarship focused primarily on its protection-oriented provisions, those guaranteeing children's rights to health, education, freedom from exploitation, and the like. More recent scholarship has increasingly emphasized the UNCRC's participatory dimension, particularly Article 12's guarantee of the child's right to express views and have them taken into account in all matters affecting the child.

The participatory rights dimension of the children's rights framework has generated significant controversy in the context of child labour regulation. Critics of rigid minimum age laws have argued that these laws fail to respect the agency of older adolescents who make rational decisions to work in preference to inadequate or inaccessible schooling, and that a more participatory approach would allow older children to have a voice in the regulatory decisions that affect them. Defenders of strong minimum age laws respond that the conditions that drive children to prefer work over school are themselves the product of rights violations, including the right to quality education, and that the solution is to improve educational conditions rather than to accept child labour as an appropriate expression of children's agency.

This debate has particular resonance in the Bangladesh context, where the quality and accessibility of primary and secondary education remain significant problems. Research consistently shows that children's decisions to work rather than attend school are driven primarily by economic necessity and the perceived inadequacy of available education, not by a considered preference for work over learning. This suggests that the participatory rights framework, properly understood, supports not a weakening of minimum age protections but a strengthening of the educational and social protection conditions that would make school attendance a genuinely attractive option for all children.

The jurisprudence of the UNCRC Committee on the Rights of the Child has consistently emphasized that states parties must take comprehensive measures to eliminate child labour, including legislative reform, enforcement strengthening, educational improvement, and social protection measures. In its most recent Concluding Observations on Bangladesh, the Committee expressed concern about the persistence of child labour and recommended that Bangladesh align its minimum age laws with international standards, strengthen enforcement, and invest in quality education and social protection.

## 1.6 Rawlsian Justice, Social Structures, and the Obligation to Eliminate Child Labour

John Rawls's theory of justice provides important resources for a philosophical account of the obligation to eliminate child labour. The Rawlsian veil of ignorance thought experiment asks what principles of justice rational persons would choose if they did not know what position they would occupy in the social order. Behind the veil of ignorance, no rational person would choose to be born into conditions of such poverty that child labour is a family survival strategy, nor would any rational person choose to be born as a child condemned to labour in hazardous conditions rather than attending school. The Rawlsian framework thus generates a strong

obligation on the state to create conditions that prevent the circumstances in which child labour flourishes, including extreme poverty, inadequate educational infrastructure, and the absence of social protection.

More specifically, Rawls's difference principle, which holds that inequalities in social institutions are just only if they benefit the least advantaged members of society, provides a powerful tool for evaluating the institutions and policies that generate child labour. The global value chain structure of the Bangladesh garments industry, in which wealthy global brands benefit from artificially suppressed labour costs that are in part a function of child labour, is straightforwardly unjust by the difference principle. The policy frameworks promoted by international financial institutions that prioritize export-led growth and fiscal austerity over social investment in education and health care are similarly problematic from a Rawlsian perspective.

Recent scholarship at the intersection of Rawlsian political philosophy and international development economics has highlighted the limitations of the Rawlsian framework for addressing global injustices of this kind, since Rawls himself confined his theory of justice to the basic structure of a single society. Thomas Pogge's extension of Rawlsian principles to the global domain, and his argument that the global poor are made worse off by global institutional arrangements that wealthy countries are responsible for creating and maintaining, provides a more globally oriented framework for understanding the structural causes of child labour in Bangladesh and the responsibilities of wealthy countries in addressing those causes.

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## CHAPTER TWO: HISTORICAL DEVELOPMENT OF CHILD LABOUR LAW IN BANGLADESH: FROM COLONIAL REGULATION TO CONTEMPORARY REFORM

### 2.1 Child Labour in Colonial Bengal: Historical Context and Legal Response

The history of child labour regulation in the Bengal delta begins, as does so much of the region's legal history, with the colonial encounter. Before British colonization, child labour in various forms was a normal feature of agrarian and artisanal production. Children participated in family agricultural labour, in the putting-out system of textile production, and in craft manufacture. This participation was embedded in the social structures of family, caste, and community, and while it could be exploitative and harmful, it was governed by traditional norms and constraints that limited the most egregious forms of abuse.

The colonial economy transformed child labour in important ways. The commodification of labour and the development of cash crop agriculture, factory production, and commercial trade created new forms of child labour that were more intensive, more dangerous, and less constrained by traditional norms. Child labour in the colonial period was not merely a social phenomenon but a deliberate element of the colonial economy: children provided cheap and tractable labour in the indigo plantations, the jute mills, and the domestic service economy that sustained the colonial administrative apparatus.

The first legal regulation of child labour in British India came with the Factories Act of 1881, which prohibited the employment of children below seven years of age in factories and restricted the working hours of children between seven and twelve. Subsequent Factory Acts in 1891 and 1911 progressively raised the minimum age to nine, then to twelve, and introduced further restrictions on hours and working conditions. These legal provisions were, however, extremely limited in their practical effect. They applied only to registered factories above a certain size, leaving the vast majority of child labourers in agriculture, domestic service, and small-scale industries entirely outside their scope. Enforcement was minimal, and the penalties for violation were derisory.

The Mines Act of 1901, later replaced by the Mines Act of 1923, prohibited the employment of children below twelve in mines, reflecting recognition of the particular hazards of mining labour. The Children (Pledging of Labour) Act, 1933, addressed the practice of pledging the labour of children as security for loans, a practice that was widespread in rural Bengal and constituted a form of debt bondage. The Act prohibited the pledging of child labour but did not effectively address the underlying debt structures that made such pledging economically rational for desperate families.

The legislative framework produced by the colonial period was thus fragmented, limited in scope, weak in enforcement, and fundamentally shaped by the priorities of the colonial economy rather than the welfare of child workers. The substantive concern with child welfare that animated the progressive factory legislation in Britain, itself driven by decades of labour movement agitation and reformist philanthropy, was largely absent from the colonial legislative process in Bengal, where the interests of planters, mill owners, and the colonial administration consistently took precedence over the welfare of child workers.

### 2.2 The Pakistan Period and the Inherited Legal Framework (1947-1971)

The partition of British India and the creation of Pakistan in 1947 did not bring significant changes to the legal framework governing child labour in the eastern wing of the new state. The provincial government of East Pakistan inherited the colonial legislative framework largely intact, including the Employment of Children Act, 1938, which had been enacted in the final decade of colonial rule and represented the most comprehensive colonial era attempt to regulate child labour.

The Employment of Children Act, 1938, prohibited the employment of children below fifteen years in certain hazardous occupations, including railway employment and port operations, and prohibited the employment of children below fourteen in factories and mines. It also prohibited the employment of children in certain specified dangerous occupations set out in a schedule. The Act was a modest improvement on earlier colonial legislation, but it remained limited in scope and weak in enforcement, and it reflected the fundamental compromise of colonial labour legislation: protecting children just enough to defuse the most visible abuses while leaving the underlying economic structures that generated child labour entirely intact.

The period of Pakistani rule was, for East Bengal, a period of economic exploitation and political marginalization, as documented in Part One and Part Three of this textbook. The jute-based

economy of East Pakistan generated enormous revenues for the Pakistani state while the population of East Pakistan remained in conditions of profound poverty. Child labour was pervasive across this economy, in the jute fields, in domestic service, in the small manufacturing establishments of Dhaka and Chittagong, and in the informal urban economy. The legal framework nominally prohibiting child labour was observed largely in the breach.

The emergence of the Bangladesh national liberation movement, culminating in the War of Liberation in 1971, was not primarily a labour rights movement, but labour rights and economic justice were important elements of the political platform that galvanized popular support for independence. The Awami League's six-point programme, which provided the political framework for the independence movement, included demands for economic autonomy and equitable development that had obvious implications for workers' rights, including the rights of child workers. The founding documents of the new state of Bangladesh would reflect these commitments, at least at the level of formal constitutional principle.

### 2.3 The Post-Independence Period and the Development of Child Labour Law (1971-2000)

The Constitution of Bangladesh, adopted in 1972, contains provisions that are directly relevant to child labour. Article 34(1) prohibits all forms of forced labour, providing that "all forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." Article 34(2) creates an exception for "compulsory labour by persons undergoing lawful punishment for a criminal offence," a qualification that creates significant complexities that will be examined in detail in the discussion of forced labour below.

The Fundamental Principles of State Policy in Part II of the Constitution include provisions directly relevant to child welfare and child labour. Article 14 commits the state to emancipating the "toiling masses" and peasants from all forms of exploitation. Article 15 recognizes the right to work as a basic need. Article 17 commits the state to establishing a uniform, mass-oriented, and universal system of free and compulsory education. Article 28(4) permits the state to make special provisions for women and children. These principles, though not directly enforceable as fundamental rights, provide important constitutional guidance for the interpretation and development of child labour law.

The Children Act, 1974, though primarily focused on juvenile delinquency and the welfare of children in conflict with the law, established important institutional mechanisms for the protection of vulnerable children, including Children's Courts and the powers of magistrates to make orders for the welfare of children in need of care and protection. The Act reflected the state's recognition that children required special legal treatment, even if the specific provisions relating to child labour remained underdeveloped.

Throughout the 1970s and 1980s, child labour remained pervasive and largely unaddressed as a matter of policy priority. The garments industry, which began its dramatic expansion in the mid-1970s and early 1980s, employed significant numbers of child workers, particularly girls from rural areas who migrated to Dhaka and Chittagong to work in the new export-oriented factories. The bonded brickfields that proliferated across the country, the transport sector, the domestic service economy, and the informal commercial sector all employed large numbers of children.

The legal prohibitions that existed were not enforced, and the institutional capacity for enforcement was essentially non-existent.

The 1990s saw the beginning of a more serious engagement with child labour as a policy issue, driven in part by international pressure, particularly from the United States. The passage in the United States of the Child Labor Deterrence Act (popularly known as the Harkin Bill) in 1992, and the threat of trade sanctions against countries that employed children in export industries, prompted a significant, if controversial, response from Bangladesh. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA), under pressure from American importers, undertook a survey that found approximately fifty thousand child workers in the garments sector. The response was a Memorandum of Understanding signed in 1995 between BGMEA, the ILO, and UNICEF, which provided for the removal of child workers from garment factories, the provision of non-formal education for removed children, and stipends to compensate for lost income.

The 1995 MOU was an important intervention, but it was also deeply controversial and has been extensively criticized in the scholarly literature. Critics argued that the rapid removal of child workers from the garments sector, without adequate provision for their welfare, simply displaced them into more dangerous informal employment. Studies conducted in the wake of the MOU found that many children removed from garment factories ended up working in stone-crushing operations, brick kilns, domestic service, and the sex trade, all of which were significantly more dangerous than garments work. The MOU's focus on removing children from the formally regulated sector, without addressing the structural conditions that drove child labour, exemplified a narrow and counterproductive approach to child labour elimination.

This experience generated an important lesson that has been influential in subsequent international and domestic policy on child labour: the elimination of child labour requires attention to the alternatives available to children and their families, not merely to the prohibition of work in particular sectors. A child who is removed from factory employment without access to quality education and without family income replacement is not protected; the child is simply pushed into a different and potentially worse form of labour. This lesson informed the subsequent development of child labour policy in Bangladesh, including the adoption of the National Child Labour Elimination Policy in 2010 and the successive National Plans of Action for the Elimination of Child Labour.

### 2.4 Legislative Development: The Bangladesh Labour Act, 2006, and Its Treatment of Child Labour

The Bangladesh Labour Act, 2006, represented the most comprehensive codification of labour law in Bangladesh's history, consolidating twenty-five previously separate pieces of legislation into a single statute. The treatment of child labour in the BLA 2006 was significantly more elaborate and protective than anything that had preceded it, though it also contained significant limitations and inconsistencies that have been the subject of sustained criticism.

Chapter XIII of the BLA 2006 (Sections 34-44) contains the primary provisions on child and adolescent labour. Section 34 prohibits the employment of children, defined in Section 2(63) as

persons who have not completed their fourteenth year of age, in any establishment to which the Act applies. Section 35 sets out specific rules for the employment of adolescents, defined as persons between fourteen and eighteen years of age: adolescents may be employed only in non-hazardous work, must be medically certified as fit for work, may not work more than five hours per day or thirty hours per week, may not work between 7 p.m. and 7 a.m., and are entitled to the same rate of wages as adult workers for the same work.

Section 44 empowers the Chief Inspector to prescribe a list of dangerous operations in which no adolescent shall be employed, and the Bangladesh Labour Rules, 2015, set out an extensive schedule of such dangerous operations. The schedule, as updated in 2022 following Bangladesh's ratification of ILO Convention No. 138, now covers forty-three sectors deemed hazardous for persons below eighteen years of age.

The BLA 2006's treatment of child labour has been criticized on several grounds. First, the minimum age of fourteen is below the standard of fifteen years recommended by ILO Convention No. 138 for general employment, creating an inconsistency with international obligations. Second, the Act's definition of "establishment" and "factory" means that large categories of child labour, including domestic work, informal agricultural labour, and street-based work, fall entirely outside the Act's scope. Third, the penalty provisions for child labour violations were, until recent amendments, widely regarded as inadequate: Section 308 provided for a maximum fine of five thousand taka for employing a child in violation of the Act, a sum so small as to be functionally meaningless as a deterrent.

Fourth, and most fundamentally, the BLA 2006's approach to child labour was limited to prohibition and regulation within the formal sector, without any serious attempt to address the underlying structural causes of child labour. The Act said nothing about social protection for families whose children worked out of economic necessity, nothing about the provision of alternative education or skills training for children removed from work, and nothing about the role of employers, including supply chain actors, in enabling or perpetuating child labour.

### 2.5 The National Child Labour Elimination Policy (2010) and the National Plans of Action

The National Child Labour Elimination Policy of 2010 represented an attempt to adopt a more comprehensive, multi-dimensional approach to child labour. The Policy set the goal of eliminating all forms of child labour by 2025, a target subsequently incorporated into the SDG framework through Target 8.7. The Policy identified the following key strategies: legal and institutional reform, education and non-formal education, social protection and poverty reduction, awareness-raising and behaviour change communication, and international and regional cooperation.

The first National Plan of Action for the Elimination of Child Labour (NPA) was adopted in 2012-2016, establishing specific time-bound targets and assigning responsibilities to government ministries and departments. The NPA was extended until 2021, and in 2021 the Ministry of Labour and Employment published a revised NPA for 2021-2025. The revised NPA is organized around five strategic priorities: preventing child labour; withdrawing child labourers; supporting child labourers and their families; institutional capacity-building; and monitoring and evaluation.

The implementation of these policies has produced some measurable results, but the overall picture remains deeply concerning. The 2022 National Child Labour Survey, conducted with ILO support and published in March 2024, revealed a decrease in hazardous child labour from 1.280 million (3.2 percent of children aged 5-17) in 2013 to 1.068 million (2.7 percent) in 2022. However, the total number of children engaged in child labour slightly increased over the same period, from 1.698 million (4.3 percent) in 2013 to 1.776 million (4.4 percent) in 2022. These figures suggest that while the elimination of the most dangerous forms of child labour has made some progress, the overall incidence of child labour has not been significantly reduced, and Bangladesh was clearly not on track to achieve the 2025 target of eliminating all child labour.

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## CHAPTER THREE: THE STATUTORY FRAMEWORK OF CHILD LABOUR LAW IN CONTEMPORARY BANGLADESH

### 3.1 The Architecture of Legal Regulation: Multiple Statutes and Their Interrelationships

The legal regulation of child labour in Bangladesh does not rest on a single comprehensive statute but is distributed across multiple pieces of legislation, each with its own definitions, scope, and enforcement mechanisms. Understanding the architecture of this regulatory framework requires attention to the relationships between these different legal instruments and the gaps and inconsistencies that arise from their fragmented character.

The primary instruments are the Bangladesh Labour Act, 2006, as amended most recently by the Bangladesh Labour Act (Amendment) Ordinance, 2025; the Bangladesh Labour Rules, 2015, as amended; the Children Act, 2013, which replaced the colonial-era Children Act, 1974; the Domestic Violence (Prevention and Protection) Act, 2010; the Human Trafficking Deterrence and Suppression Act, 2012; the Prevention and Suppression of Human Trafficking Act, 2012; the Nari O Shishu Nirjatan Daman Ain, 2000, as amended; and the Export Processing Zones (EPZ) Labour Act, 2019. Each of these instruments touches on different aspects of child labour and child protection, and their relationship requires careful analysis.

The Children Act, 2013 is the foundational instrument for child protection in Bangladesh, establishing the definition of "child" as any person under eighteen years of age, consistent with the UNCRC. This definition creates an immediate inconsistency with the Bangladesh Labour Act, which permits the employment of adolescents between fourteen and eighteen years of age in non-hazardous work. The interplay between the Children Act's broad protective conception of childhood and the Labour Act's more permissive approach to adolescent employment is a source of continuing doctrinal uncertainty.

The Children Act, 2013 establishes the Children Welfare Boards at national and district levels, creates the office of the Children Affairs Officer, and provides for Children's Courts with jurisdiction over cases involving children as both victims and offenders. The Act's provisions relating to children in need of care and protection are particularly relevant to child labour: Section 2(8) defines a "socially disintegrated child" in terms that encompass children who are

forced to work, and the Act empowers Children's Courts to make orders for the protection and rehabilitation of such children.

### 3.2 The Bangladesh Labour Act, 2006: Detailed Analysis of Child Labour Provisions

A close reading of the child labour provisions of the BLA 2006, in their current amended form, reveals both the progress that has been made in developing the statutory framework and the significant limitations that remain.

Chapter XIII of the BLA 2006 (Sections 34-44) opens with the fundamental prohibition in Section 34: "No child shall be employed or permitted to work in any establishment." The term "establishment" is defined in Section 2(14) to cover a wide range of commercial and industrial undertakings, but the definition is not comprehensive enough to cover all forms of work in which children are engaged. In particular, agricultural establishments, domestic workplaces, and street-based commercial activities are not covered or are only marginally covered by the definition of "establishment."

Section 34A, inserted by the 2013 amendment, specifically addresses the situation of children working in the premises of residential establishments, recognizing the particular vulnerability of children employed in domestic service contexts. However, the practical effect of this provision has been limited by enforcement difficulties and by the general exclusion of domestic work from the Act's scope.

Section 35 governs adolescent employment. The section requires that an adolescent seeking employment must first obtain a certificate of fitness from a registered medical practitioner, and that the employer must keep this certificate on file and available for inspection. The section also limits working hours for adolescents to five hours per day and thirty hours per week, prohibits night work for adolescents (defined as work between 7 p.m. and 7 a.m.), and entitles adolescents to the same wages as adults for the same work. These provisions, if properly enforced, would provide meaningful protections for adolescent workers. The problem, as throughout the Labour Act's child labour provisions, is enforcement.

Section 38 establishes a register of child and adolescent workers that every employer must maintain and make available for inspection. Section 39 prohibits the employment of any child or adolescent in any dangerous work, and defines "dangerous work" by reference to a schedule that may be updated by subordinate legislation. Section 40 provides that any person who contravenes Chapter XIII is guilty of an offence. The penalty provisions have been significantly strengthened in successive amendments, and the 2025 amendment has further enhanced penalties to reflect the seriousness of child labour violations, though the precise figures under the 2025 Ordinance require confirmation as the implementing gazette notifications are published.

### 3.3 The Hazardous Work List and the 2022 Expansion

One of the most significant recent developments in Bangladesh's statutory framework for child labour was the expansion of the hazardous work list in 2022, following Bangladesh's ratification of ILO Convention No. 138 in March 2022. The revised list, published on 29 April 2022,

expanded the number of hazardous sectors prohibited for persons below eighteen years of age from thirty-eight to forty-three, adding five new sectors: fish drying, street-based informal work, brick or stone production, informal tailoring and garment production, and waste management.

The expansion of the hazardous work list represents an important acknowledgment that the sectors most associated with child labour in Bangladesh are genuinely hazardous, and it creates a firmer legal basis for enforcement action in these sectors. However, the practical significance of the expansion depends entirely on enforcement capacity, which remains severely limited. The Department of Inspection for Factories and Establishments (DIFE) is responsible for enforcing the hazardous work list, but its inspector-to-workplace ratio is woefully inadequate for the task. Despite a gradual increase in the number of inspectors since 2022, the total inspection workforce remains far below what would be needed to cover the enormous informal economy in which the vast majority of child labour occurs.

The fish drying sector is particularly notable as a new addition to the hazardous work list. Fish drying is a major industry in coastal Bangladesh, particularly in the Cox's Bazar and Chittagong regions, and it has been documented as a sector with significant child labour, including children working in hazardous conditions involving chemical preservatives, heavy physical labour, and exposure to extreme weather. The inclusion of fish drying in the hazardous work list creates a legal basis for enforcement action, but effective implementation requires coordination between DIFE, the Ministry of Fisheries, and local government authorities, as well as investment in alternative livelihoods for the families that depend on children's labour in this sector.

Street-based informal work is another significant addition. Children engaged in street-based work, including street vending, porter services, and transport assistance, occupy a highly visible yet legally invisible position. They are engaged in informal commercial activity that falls outside the traditional definitions of "employment" and "establishment," and they are therefore difficult to reach through conventional labour inspection mechanisms. The inclusion of street-based informal work in the hazardous work list signals a legislative intent to extend the protective reach of child labour law to this category, but the practical implementation of this protection requires innovative approaches to inspection and social welfare that go beyond traditional factory inspection.

### 3.4 The Export Processing Zones: A Special Legal Regime and Its Implications for Child Labour

The Export Processing Zones (EPZs) in Bangladesh are governed by a separate legal framework, administered by the Bangladesh Export Processing Zones Authority (BEPZA). The EPZ Labour Act, 2019, which replaced the earlier Shilpa Ain (Industrial Law), was enacted to bring the labour law applicable to EPZ workers into closer alignment with the general Labour Act, while maintaining certain special provisions appropriate to the EPZ context.

The EPZ Labour Act's treatment of child labour largely mirrors that of the general Labour Act, prohibiting the employment of children below fourteen and restricting the employment of adolescents in hazardous work. However, the EPZ's enforcement mechanisms differ from the

general labour law framework, with BEPZA exercising concurrent enforcement functions alongside DIFE.

The interaction between EPZ labour law and global supply chain standards is particularly significant in the child labour context. The major global brands that source from Bangladesh EPZs have adopted corporate codes of conduct that include child labour prohibitions and monitoring requirements. These private governance mechanisms, operating through supply chain audits, factory certification schemes, and buyer-supplier contracts, are in some respects more effective at detecting and eliminating child labour in the formal export sector than the state's enforcement mechanisms. However, private governance mechanisms are limited in scope: they reach only the formal, branded export manufacturing sector, leaving the much larger informal economy entirely outside their reach.

The relationship between public law and private governance in the child labour context raises important jurisprudential questions. Is private supply chain governance a complement to state regulation or a substitute for it? Does the existence of effective private governance mechanisms reduce the urgency of strengthening public enforcement, or does it create a two-tier system in which children working for export-oriented factories are better protected than children working in the domestic informal economy? The answer, from a rights-based perspective, is clear: private governance mechanisms are valuable supplements to state regulation but cannot substitute for it, and the existence of effective private governance in the formal sector makes the weakness of public enforcement in the informal sector even more problematic, because it creates a systematic disparity in the protection available to different categories of child workers.

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## CHAPTER FOUR: THE WORST FORMS OF CHILD LABOUR: LAW, THEORY, AND POLITICAL ECONOMY

### 4.1 The ILO Convention No. 182 Framework and Its Domestic Implementation

ILO Convention No. 182, the Worst Forms of Child Labour Convention, 1999, represents the international community's most urgent legislative priority with respect to child labour. The Convention identifies four categories of worst forms that demand immediate elimination: all forms of slavery and practices similar to slavery, including the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour; the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring, or offering of a child for illicit activities, particularly for the production and trafficking of drugs; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

Bangladesh ratified Convention No. 182 in 2001, making it one of the earliest countries to do so, and incorporated the Convention's requirements into domestic law through the Child Labour (Prohibition and Regulation) Act and through the relevant provisions of the BLA 2006. However, the implementation of the Convention's requirements has been deeply uneven. The formal sector and the export manufacturing industries have seen significant progress in

eliminating the worst forms of child labour, driven in part by the international pressure associated with trade conditionality and supply chain standards. The informal sector, domestic service, and the various forms of hidden and trafficked child labour remain deeply problematic.

The first category of worst forms, slavery and slavery-like practices, encompasses the situation of bonded child labourers who are pledged as security for family debts, children who are trafficked for commercial sexual exploitation or forced labour, and children who are subjected to conditions of servitude in domestic employment. These practices are not merely violations of labour law but constitute serious crimes under Bangladesh's criminal law, including the Human Trafficking Deterrence and Suppression Act, 2012, and the Nari O Shishu Nirjatan Daman Ain, 2000. The intersection of child labour law, trafficking law, and criminal law in relation to these worst forms creates a complex legal landscape that requires careful navigation.

### 4.2 Bonded Child Labour and Debt Bondage: A Deep Investigation

Debt bondage, the practice of pledging a child's labour as security for a loan advanced to the child's parents or to the child directly, is one of the most entrenched and most documented forms of worst-case child labour in Bangladesh. Debt bondage is concentrated particularly in the brick kiln industry, the stone breaking sector, certain agricultural contexts, and the domestic service sector. In its most extreme forms, debt bondage constitutes a form of forced labour that is not meaningfully distinguishable from slavery.

The jurisprudential characterization of debt bondage as forced labour has been clarified through the decisions of international human rights bodies and through the supplementary provisions of ILO Convention No. 29 on Forced Labour, which Bangladesh has ratified. The ILO's definition of forced labour encompasses not only explicitly compelled labour, such as labour performed under threat of physical violence, but also labour performed under the threat of debt, the confiscation of identity documents, or other forms of coercion that exploit the worker's vulnerability. Debt bondage clearly falls within this definition.

The practice of debt bondage in Bangladesh's brick kiln industry has been extensively documented by human rights organizations, academic researchers, and government inspectors. The typical pattern involves a dadon system whereby brick kiln owners advance loans to workers and their families during the agricultural off-season, when income is scarce. These loans are then "repaid" through labour during the brick-making season, with the repayment schedule structured in a way that makes it virtually impossible for the debtor to extinguish the debt, so that the obligation is carried over from season to season and may even be inherited by the children of the original debtor.

Children in bonded brick kiln labour typically work alongside their parents, performing physically demanding tasks including carrying heavy loads of bricks, mixing mortar, and operating kilns at extremely high temperatures. The hazards are multiple and severe: extreme heat, heavy physical loads, exposure to brick dust and kiln fumes, risk of burns and physical injury, and the psychological harm of confinement and loss of educational opportunity. Research by the Bangladesh Institute of Labour Studies and by international NGOs has documented rates

of malnutrition, respiratory disease, and musculoskeletal injury among bonded kiln workers, including children, that are significantly higher than in comparable non-bonded populations.

The legal response to bonded labour in Bangladesh has been partially but inadequately effective. The Children (Pledging of Labour) Act, 1933, technically still in force as part of the inherited colonial legislation, prohibits the pledging of child labour. Article 34 of the Constitution prohibits all forms of forced labour. Section 102 of the BLA 2006 prohibits forced labour and provides criminal penalties for violations. The Human Trafficking Deterrence and Suppression Act, 2012, provides for severe penalties for trafficking, including child trafficking for labour exploitation purposes, with sentences ranging from imprisonment for five years up to death in the most serious cases.

Despite this legal framework, prosecutions for debt bondage and bonded child labour remain rare, conviction rates are extremely low, and the brick kiln industry continues to employ large numbers of bonded workers, including children. Several factors explain this gap between law and practice. First, debt bondage is structurally embedded in the credit markets of rural Bangladesh: in the absence of formal banking services accessible to poor rural households, the kiln owner's advance represents one of the few sources of credit available to desperate families. Eliminating debt bondage without providing alternative credit mechanisms would simply deprive poor families of their only source of emergency finance. Second, the social geography of brick kiln operations places them outside the normal reach of labour inspectors, whose attention is focused primarily on urban factory operations. Third, the collusion between kiln owners and local power holders, including landowners, moneylenders, and political figures, creates a political economy of impunity that makes enforcement of anti-bondage laws politically difficult.

The 2025 Labour Act Amendment Ordinance and the accompanying reforms have addressed some of these systemic problems by strengthening inspection mechanisms, increasing penalties, and requiring employers to maintain more comprehensive records of worker recruitment and advances. The ratification of ILO Convention No. 190 on Violence and Harassment has also created a new legal basis for addressing the coercive and abusive conditions that characterize many bonded labour arrangements. However, the structural factors driving debt bondage will not be addressed by legal reform alone: eliminating debt bondage requires investment in rural financial services, social protection, and educational infrastructure that goes well beyond the scope of labour law reform.

### 4.3 Child Trafficking and the Nexus with Child Labour

The relationship between child trafficking and child labour in Bangladesh is complex and multidimensional. Trafficking for the purpose of labour exploitation, including trafficking into domestic service, brick kiln labour, and the sex trade, represents the most severe form of child labour exploitation, combining the harms of child labour with the additional harms of deception, coercion, and displacement from family and community.

Bangladesh is a source, transit, and destination country for trafficking, with cross-border trafficking flows running primarily to India and the Middle East. Internal trafficking, from rural areas to urban centres and from the mainland to remote coastal and haor areas, is also significant.

The trafficked child is typically a girl from a poor rural family who is recruited by a trafficker posing as a labour recruiter or marriage broker, promising work or marriage in Dhaka or abroad, and then transported to a destination where she is forced to work in domestic service, the garments sector, or the sex trade.

The Human Trafficking Deterrence and Suppression Act, 2012, defines trafficking in terms that encompass labour trafficking as well as sex trafficking, and provides for severe penalties including the death penalty in cases where trafficking results in death. The Act establishes special tribunals for trafficking cases and provides for victim protection and witness assistance. On paper, Bangladesh's anti-trafficking legal framework is comprehensive and severe.

The practical implementation of the anti-trafficking framework is, however, severely compromised by the intersection of trafficking with migration, the difficulty of distinguishing trafficking from consensual irregular migration, the vulnerability of victims to re-victimization by law enforcement agencies, and the power of the trafficking networks. Research by the International Organization for Migration and by NGOs such as BRAC has documented that trafficking victims who come into contact with the law enforcement system in Bangladesh are frequently treated as criminals rather than victims, subjected to prosecution for immigration violations or sex work, and denied the protection and rehabilitation services to which they are legally entitled.

The nexus between child trafficking and the informal domestic service economy is particularly significant and has been consistently underaddressed in both law and policy. The practice of young girls being sent from rural areas to work as domestic servants in urban households, often arranged through informal networks of recruiters and intermediaries, frequently involves elements of deception, confinement, and exploitation that render it indistinguishable from trafficking, even when there is no formal debt relationship or explicit coercion. The recruited domestic worker may be told she will receive wages, access to education, and good treatment, and instead find herself in a situation of unpaid or poorly paid servitude, unable to leave and vulnerable to physical and sexual abuse.

The 2025 Labour Act Amendment Ordinance has taken an important step by, for the first time, recognizing domestic workers ("house helps" in the language of the Ordinance) as workers entitled to the protection of the Labour Act. This recognition is a landmark development that addresses a long-standing gap in the legal framework. However, the practical protection of domestic workers, including child domestic workers, requires not only legal recognition but a fundamental rethinking of inspection and enforcement mechanisms, since domestic workplaces are private homes that are not accessible through conventional factory inspection.

### 4.4 Child Labour in the Garments Sector: Historical Analysis and Contemporary Realities

The ready-made garments (RMG) sector, which generates approximately eighty percent of Bangladesh's export earnings and employs an estimated four million workers, the vast majority of whom are women, has been at the centre of international attention regarding child labour for over three decades. The history of child labour in the garments sector illustrates the complex

interplay between economic development, international pressure, domestic politics, and the structural conditions that generate child labour.

As noted above, the 1995 MOU between BGMEA, ILO, and UNICEF represented the first systematic attempt to eliminate child labour from the garments sector, and it achieved significant results in reducing the visible presence of children in formal garment factories. Subsequent monitoring programmes, combined with the development of international supply chain compliance mechanisms, have further reduced child labour in the formal export garments sector. Major international brands that source from Bangladesh have adopted robust child labour prohibition policies backed by regular audits of their supplier factories.

The formal success of child labour elimination in the export garments sector has, however, had some unintended consequences. First, as noted above, the removal of children from formal factories without adequate alternative provision frequently displaced them into more hazardous informal employment. Second, the growth of subcontracting within the garments supply chain has created a structural incentive to push child labour into the subcontract tier, where it is less visible to brand auditors and international monitoring mechanisms. Third, the informal tailoring and garment production sector, which is not covered by the formal monitoring infrastructure, employs significant numbers of child workers in conditions that may be as hazardous as formal factory work.

The 2025 addition of "informal tailoring and garment production" to the hazardous work list addresses this third issue to some extent, but effective enforcement in the informal garment sector requires a fundamentally different approach from factory inspection: it requires community-based monitoring, engagement with informal industry associations, and investment in income alternatives for the families whose children are engaged in informal garment work.

Research published in 2024 by the International Labour Review documented the persistence of a "middle tier" of semi-informal garment production in Bangladesh, in subcontracting arrangements, home-based production, and small workshops that fall below the threshold for formal labour inspection. This middle tier employs an estimated 500,000 to 800,000 workers, a significant proportion of whom are adolescents and children. The legal status of these workers is ambiguous: they are not clearly employees of the formal garment factories that indirectly profit from their labour, yet they are not entirely independent producers either. This legal ambiguity, combined with the structural incentives that push production into the informal tier, represents one of the most significant challenges for child labour elimination in the garments sector.

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## CHAPTER FIVE: FORCED LABOUR IN BANGLADESH: CONSTITUTIONAL PROHIBITION, STATUTORY REGULATION, AND STRUCTURAL REALITIES

### 5.1 The Constitutional Prohibition of Forced Labour: Text, History, and Interpretation

Article 34 of the Constitution of Bangladesh provides the fundamental legal basis for the prohibition of forced labour. The text of Article 34 states: "(1) All forms of forced labour are

prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall apply to compulsory labour (a) by persons undergoing lawful punishment for a criminal offence; or (b) required by any law for public purposes."

The constitutional prohibition of forced labour in Article 34(1) is formulated in absolute terms: "all forms of forced labour are prohibited." This broad formulation reflects the influence of Article 4 of the Universal Declaration of Human Rights and Article 8 of the International Covenant on Civil and Political Rights, both of which prohibit slavery, the slave trade, and forced or compulsory labour. The absolute character of the prohibition reflects the philosophical understanding, discussed in Section 1.2, that forced labour represents a fundamental violation of human dignity and personal autonomy that cannot be justified by any countervailing consideration.

The exceptions in Article 34(2) are significant and require careful analysis. The exception for "compulsory labour by persons undergoing lawful punishment for a criminal offence" reflects the common exception contained in international human rights instruments, which permit prison labour as part of a lawful criminal sentence. This exception is consistent with ILO Convention No. 29, which excludes from the definition of forced labour "any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations."

The second exception, for labour "required by any law for public purposes," is more expansive and has been the subject of doctrinal controversy. The phrase "required by any law for public purposes" could potentially be interpreted very broadly to exempt from the forced labour prohibition any form of compulsory labour that is authorized by legislation and directed toward some public purpose. This broad interpretation would create a significant loophole in the constitutional protection, potentially exempting from constitutional scrutiny forms of compulsory labour that would otherwise violate the spirit of Article 34(1).

The Bangladesh courts have not extensively considered the scope of Article 34 and the limits of its exceptions, and the jurisprudence on this provision remains underdeveloped compared to the elaborate jurisprudence on forced labour that has developed in the European Court of Human Rights and in the constitutional courts of India and other common law jurisdictions.

The concept of forced labour requires careful definitional analysis. ILO Convention No. 29, which Bangladesh has ratified, defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." This two-part definition, requiring both involuntariness and the presence of a penalty for non-compliance, has been extensively analyzed in the ILO's Committee of Experts reports and in numerous domestic and international decisions.

The concept of "menace of any penalty" is broader than physical coercion: it encompasses the threat of financial penalties, the confiscation of identity documents, the threat of denunciation to immigration authorities, the threat of loss of employment or housing, and other forms of coercion that operate on the worker's freedom of choice. This broad understanding of the relevant forms of

coercion is particularly important in the Bangladesh context, where debt bondage, document confiscation, and threats of violence or denunciation are documented features of forced labour situations in the brick kiln industry, the domestic service sector, and the migration recruitment industry.

The concept of "voluntary offer" is equally complex. A worker who enters a hazardous and badly paid job out of economic desperation, with no practical alternatives, has in some sense "offered himself voluntarily" in the formal legal sense, yet the voluntariness of this offer is compromised by the structural conditions of poverty and the absence of alternatives. The ILO has acknowledged this complexity in its evolving guidance on the definition of forced labour, noting that the distinction between forced labour and freely chosen work in conditions of extreme economic vulnerability is a matter of degree rather than kind. The 2012 ILO indicators of forced labour provide a practical framework for identifying forced labour situations, listing eleven indicators including abuse of vulnerability, restriction of freedom of movement, retention of identity documents, debt bondage, threats and violence, physical confinement, and excessive overtime.

### 5.2 The Statutory Framework: Section 102 of the Bangladesh Labour Act and the Criminal Law

Section 102 of the Bangladesh Labour Act, 2006 provides that "no employer shall employ or cause to be employed any worker by compulsion or against the will of a worker," and that any employer who violates this provision is guilty of an offence. This statutory provision is important as a labour law complement to the constitutional prohibition of forced labour, creating civil and criminal liability in the employment context.

The weakness of Section 102 as a practical instrument against forced labour is, however, significant. The section does not define "compulsion" or "against the will of a worker," leaving the interpretation of these terms to case-by-case adjudication in the Labour Courts. The Labour Courts' jurisdiction is limited to establishments covered by the Labour Act, which excludes domestic workplaces, agricultural establishments below a certain size, and various informal sector activities. The penalty for violation of Section 102, even after successive increases, remains relatively modest by comparison with the profits that employers may derive from forced labour arrangements.

The main criminal law instrument against forced labour is the Human Trafficking Deterrence and Suppression Act, 2012, which addresses trafficking for the purpose of forced labour as a serious criminal offence. As noted above, this Act provides for severe penalties including death in the most serious cases, and establishes special anti-trafficking tribunals. The difficulty of using this Act effectively against labour trafficking, as distinct from sex trafficking, relates to evidentiary challenges, the characterization of "consent" in coercive migration contexts, and the limited investigative capacity of the police in relation to labour trafficking cases.

The intersection of forced labour with labour migration deserves particular attention. Millions of Bangladeshis work abroad, particularly in the Middle East and Southeast Asia, under recruitment and employment arrangements that frequently involve elements of deception and coercion that

may rise to the level of forced labour. The issue of migrant labour will be addressed in greater detail in Part Fourteen of this textbook, but it is important to note here that the vulnerability of Bangladeshi migrants to forced labour is partly generated by the regulated labour recruitment industry in Bangladesh, which is characterized by high recruitment fees that create debt bondage-like arrangements, inadequate pre-departure preparation and training, and weak monitoring of migrants' welfare and working conditions abroad.

### 5.3 Domestic Forced Labour: The Situation of Domestic Workers

The situation of domestic workers in Bangladesh represents perhaps the most prevalent and most systematically concealed form of forced labour in the country. Domestic workers, overwhelmingly women and girls, work in private households in conditions of isolation, dependency, and vulnerability that make them highly susceptible to exploitation and abuse. The absence of any legal framework specifically governing domestic work meant, until the 2025 Labour Act Amendment Ordinance, that domestic workers were entirely outside the protection of labour law.

Research by national NGOs and by the ILO has documented widespread abuses in the domestic service sector, including: non-payment or underpayment of wages; excessive working hours with no rest periods; confinement within the employer's home; physical and verbal abuse; sexual harassment and assault; and the use of debt, document confiscation, and threats to maintain control over domestic workers. Child domestic workers are particularly vulnerable: they are frequently recruited from poor rural families through informal networks, placed in urban households under conditions of debt or obligation, and unable to leave because of their age, their distance from home, and the absence of any legal mechanism to assist them.

The landmark recognition of domestic workers as workers under the 2025 Labour Act Amendment Ordinance is a fundamental change in Bangladesh's legal framework. However, the practical implementation of this recognition faces enormous challenges. Labour inspection of private homes raises constitutional questions about the right to privacy and the sanctity of the home. The supervision of domestic work conditions requires mechanisms very different from factory inspection, perhaps including licensing of domestic work agencies, self-reporting requirements, and community-based monitoring mechanisms. The capacity of domestic workers themselves to exercise legal rights is severely compromised by their social isolation, their lack of knowledge of their legal rights, their economic dependency on their employers, and the general social vulnerability associated with being a young woman far from home.

The ILO Convention on Decent Work for Domestic Workers, Convention No. 189 (2011), sets out comprehensive standards for the protection of domestic workers, including the right to a written contract, the right to information about terms and conditions of employment, the right to a minimum wage, limitations on working hours, the right to rest and leave, and protections against violence and abuse. Bangladesh has not yet ratified Convention No. 189, though advocacy campaigns have been ongoing for several years. The ratification of Convention No. 189, combined with effective legislative implementation, would significantly strengthen the legal framework for domestic worker protection.

### 5.4 Forced Labour in the Brick Kiln Industry: A Systemic Analysis

The brick kiln industry, which employs an estimated one million workers across Bangladesh and is a critical input to the construction boom that has accompanied rapid urbanization, represents one of the most extensively documented sites of forced labour in the country. The industry is characterized by a combination of factors that generate and sustain forced labour: seasonal demand patterns that create leverage for employer control; isolated production sites remote from urban labour markets and inspection infrastructure; debt bondage arrangements that bind workers to specific employers; and a workforce drawn from the most vulnerable segments of the rural poor, including landless labourers, scheduled caste communities, and indigenous minorities.

The social anthropology of the brick kiln labour market is illuminating. Most brick kilns operate on a seasonal cycle running from October to May, during the dry season when bricks can be produced and fired. Workers are recruited during the agricultural off-season, typically through a combination of direct recruitment by kiln owners or their agents, network recruitment through community ties, and the dadon advance system. Workers and their families travel to kiln sites that may be many kilometres from their home villages, and they are housed in temporary accommodation within the kiln compound. This residential arrangement creates a form of spatial control that reinforces the debt bond: workers who attempt to leave the kiln before repaying their advance have no easy means of transport or refuge.

The legal characterization of the kiln system as forced labour has been the subject of some doctrinal debate. Employers argue that workers enter kiln employment voluntarily and that the dadon system is simply a form of advance payment against future wages, not a debt bond. Researchers and advocacy organizations counter that the terms on which the advance is structured, including the interest charges, the wage deductions for accommodation and food, and the systematic underrecording of work completed, make it practically impossible for most workers to repay the advance and thereby regain their freedom of movement. The ILO's forced labour indicators clearly identify debt bondage, restriction of freedom of movement, and the confiscation of wages as indicators of forced labour, and the kiln system exhibits all of these features in its more extreme manifestations.

The 2025 Labour Act Amendment Ordinance has strengthened the legal framework for addressing forced labour in the brick kiln industry, including through enhanced inspection powers and stronger penalties for violation of the prohibition on forced labour. However, as with child labour, the structural factors sustaining forced labour in the brick kiln industry will not be eliminated by legal reform alone. The expansion of access to formal financial services for rural households, investment in agricultural productivity and rural livelihood diversification, and strengthening of rural social protection mechanisms are all necessary components of a comprehensive response.

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## CHAPTER SIX: DOMESTIC WORKERS AND THEIR LEGAL STATUS IN BANGLADESH: A HISTORICAL AND JURISPRUDENTIAL ANALYSIS

## 6.1 The Concept of Domestic Work and Its Legal Treatment

Domestic work, the work performed in private households including cooking, cleaning, child care, elderly care, gardening, and other household services, occupies a peculiar position in the history and theory of labour law. It has been systematically excluded from the coverage of mainstream labour law in most legal systems, and this exclusion has been extensively analyzed as a reflection of the gendered nature of labour law and the privileging of male-dominated forms of productive labour over the reproductive and care labour performed predominantly by women.

The philosophical case for including domestic work within the scope of labour law protection is compelling. Domestic workers provide services of enormous economic value: the replacement cost of the care, cooking, cleaning, and household management functions performed by domestic workers in Bangladesh has been estimated at a substantial fraction of GDP. Domestic workers are economically dependent on their employers, in conditions of extreme power asymmetry. They are subject to the direction and control of their employers to a degree that makes their work clearly an "employment" relationship in the substantive sense. And they face specific vulnerabilities associated with working in a private home, far from family and community support, in conditions of isolation and dependency that make them highly susceptible to exploitation and abuse.

The feminist jurisprudential analysis of domestic work exclusion emphasizes that the traditional exclusion of domestic work from labour law reflects a deeply gendered conception of the "standard employment relationship" as a relationship between a male breadwinner and a male employer, taking place in the "public" sphere of formal economic production. Domestic work, located in the "private" sphere of the home, performed by women for the benefit of the household, was not conceptualized as "real" work deserving legal protection. This gendered architecture of labour law reinforced and reproduced the social devaluation of care and reproductive labour that is central to patriarchal social organization.

The feminist critique has been enormously influential in the development of international and domestic law on domestic workers. The adoption of ILO Convention No. 189 in 2011 represented the culmination of decades of advocacy, and the Convention's preamble explicitly acknowledges the historical exclusion of domestic work from labour protection and frames the Convention as a corrective to this exclusion. The Convention's opening articles state that every domestic worker has rights as a worker, regardless of whether the work is performed in a live-in arrangement, and that domestic workers are entitled to the same protections as workers generally in relation to fundamental rights and principles, freedom of association and collective bargaining, the elimination of forced labour, child labour, and discrimination.

## 6.2 The History of Domestic Work in Bangladesh: Colonial Roots and Contemporary Structures

The domestic service economy in Bangladesh has deep historical roots in the colonial period, when the colonial administrative apparatus and the emerging Bengali middle class both relied heavily on domestic servants drawn from the poorest and most marginalized sections of the population. The colonial domestic servant was subject to essentially no legal protection: the

master and servant framework that governed employment relations gave the employer almost unlimited authority over the servant, and the servant's recourse against abuse was practically non-existent.

The post-independence period saw significant changes in the composition and scale of the domestic service economy, driven by rapid urbanization, the growth of the urban middle class, and the migration of large numbers of poor rural women and girls to urban centres in search of work. The garments industry absorbed millions of rural women workers, but domestic service remained one of the major employment options for women and girls who did not enter the formal labour market. The domestic service workforce in Bangladesh is estimated at between one and two million workers, the vast majority of whom are women and a significant proportion of whom are below eighteen years of age and therefore classified as children or adolescents under the Children Act, 2013.

Research on domestic workers in Bangladesh has consistently documented the vulnerability and exploitation that characterize the sector. A survey conducted by the Bangladesh Institute of Labour Studies in 2022 found that the majority of domestic workers in Dhaka received wages significantly below the legal minimum wage for comparable work, worked between twelve and sixteen hours per day with no designated rest periods, had no written contract of employment, had no access to healthcare or social protection, and reported experiencing verbal abuse from their employers. A significant minority, predominantly young girls, reported experiencing physical abuse, sexual harassment, and assault.

The absence of any legal framework specifically protecting domestic workers meant that these abuses occurred in a zone of legal impunity. Police were generally unwilling to investigate complaints of abuse by domestic workers against employers, particularly when the employer was a member of the professional or business class. The domestic worker who complained of abuse faced the prospect of dismissal, homelessness, and potential criminalization, given that irregular migration from rural areas and informal entry into the urban economy did not always produce the documentation required for access to legal services.

### 6.3 The 2025 Amendment: Recognition, Coverage, and Remaining Gaps

The recognition of domestic workers as "workers" within the scope of the Bangladesh Labour Act under the 2025 Amendment Ordinance is, as noted above, a landmark development. The recognition that "house helps" are entitled to the protections of the Labour Act represents the first time in Bangladesh's legal history that domestic workers have been formally acknowledged as a category of protected worker.

However, the practical significance of this recognition depends on the specific provisions through which it is implemented, and these provisions require careful analysis as the Ordinance's implementing gazette notifications are published and as practice develops under the new framework. Several key questions must be addressed for the recognition of domestic workers to be substantively effective.

First, the question of wage standards: will domestic workers be entitled to the statutory minimum wage, and if so, how will the minimum wage be calculated for live-in domestic workers who receive accommodation and food as part of their compensation? The valuation of in-kind benefits is a technically complex issue that has generated significant controversy in other jurisdictions, and getting it right is essential for ensuring that domestic workers receive fair monetary compensation.

Second, the question of working hours: domestic workers in live-in arrangements are essentially "on call" around the clock, and the standard working hours framework of the Labour Act is difficult to apply to a situation in which the boundary between work and rest is blurred. ILO Convention No. 189 requires states to take measures to ensure that domestic workers enjoy fair terms of employment and decent conditions of work, including adequate rest periods, and specifically requires that live-in domestic workers are entitled to daily and weekly rest periods.

Third, the question of inspection and enforcement: private households are not accessible through the conventional factory inspection mechanism, and enforcing labour standards in domestic workplaces requires a fundamentally different approach. Some jurisdictions have addressed this challenge through licensing of domestic work recruitment agencies, combined with monitoring of agency practices and conditions of employment. Others have relied on community-based monitoring and the establishment of complaint mechanisms that are accessible to domestic workers.

Fourth, the question of freedom of association: domestic workers are dispersed across millions of individual households and are unable to form trade unions through the conventional collective bargaining framework. Supporting the self-organization of domestic workers requires specific legislative accommodation, including the recognition of domestic workers' associations and the provision of organizing infrastructure accessible to geographically dispersed workers.

Fifth, the question of access to justice: a domestic worker who has been abused, underpaid, or dismissed without compensation needs an accessible, affordable, and effective legal remedy. The current Labour Court system is poorly suited to resolving disputes involving domestic workers: it is expensive, slow, and located in district towns that are far from the workplaces where domestic workers are employed. Small claims procedures, mobile legal aid services, and community-based dispute resolution mechanisms are all needed to make justice genuinely accessible for domestic workers.

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## CHAPTER SEVEN: THE INFORMAL ECONOMY, VULNERABLE WORKERS, AND THE CHALLENGE OF LEGAL COVERAGE

### 7.1 The Informal Economy in Bangladesh: Scale, Structure, and Legal Invisibility

The informal economy in Bangladesh is not a marginal feature of the economic landscape but its dominant characteristic. By most estimates, over eighty-five percent of Bangladesh's workforce is employed in the informal economy, including agriculture, domestic service, informal

manufacturing, street-based retail, transport, construction, and a vast range of service activities. These workers are largely excluded from the coverage of the formal labour law framework, which is designed primarily for workers in formal, registered establishments.

The legal treatment of informal workers raises fundamental jurisprudential questions about the purposes and reach of labour law. If the fundamental purpose of labour law is, as Kahn-Freund suggested, to counteract the inequality of bargaining power inherent in the employment relationship, then the restriction of labour law's protective framework to formal sector workers represents a profound failure of that purpose. Informal workers are typically in conditions of even greater power asymmetry than formal sector workers: they are without the protection of trade unions, without the benefit of written contracts, without access to the dispute resolution mechanisms of the Labour Courts, and without the visibility that comes from working in an establishment that is subject to inspection.

The jurisprudential challenge of extending labour law coverage to informal workers is not merely a matter of enforcement but involves fundamental conceptual questions about the nature of the employment relationship and the conditions that trigger legal protection. The conventional labour law framework assumes a dyadic employment relationship between an identifiable employer and an identifiable employee, connected by a contract of employment. But the work arrangements of many informal workers do not fit this model: they may involve triangular relationships between platforms, contractors, and workers; piece-work arrangements in which it is unclear whether the worker is an employee or a self-employed producer; home-based work in which the boundary between employment and household production is blurred; or collective work arrangements in which multiple family members contribute to a production unit that markets its output through a single trader.

The classification of these diverse work arrangements within or outside the employment relationship is not a merely technical legal question: it has profound implications for millions of workers' access to the protections of labour law. As Alice Kessler-Harris has argued in her influential historical work on the gendered politics of labour law, the boundaries of the employment relationship have historically been drawn in ways that reflected not neutral juridical reasoning but the power interests of employers and the gendered assumptions of legislators who equated "real work" with male, formal, industrial labour.

### 7.2 Gig Workers and Platform Labour: The Emerging Challenge

The emergence of platform-based labour markets in Bangladesh, while less advanced than in some other countries, represents a significant new challenge for the legal framework. Ride-hailing platforms, food delivery services, on-demand logistics, and freelance digital work platforms have all expanded significantly in Bangladesh in the past decade, creating a new category of workers whose legal status is ambiguous and whose conditions of work are often precarious.

The 2025 Labour Act Amendment Ordinance has taken the significant step of extending legal recognition to "gig and platform workers," according them rights under the Labour Act for the first time. This recognition is an important advance, but its practical implications depend on the

specific legal provisions through which it is implemented. The key question is whether platform workers will be classified as employees, entitled to the full range of protections under the Labour Act, or as independent contractors, entitled only to a more limited set of rights. The international experience with platform labour regulation suggests that this classification question is intensely contested, with platforms typically arguing for independent contractor status and workers and unions arguing for employee status.

The 2025 recognition of platform workers in Bangladesh follows a global trend toward legislative intervention in the platform labour market, driven by court decisions, regulatory initiatives, and worker organizing campaigns in multiple jurisdictions. The UK Supreme Court's landmark judgment in Uber BV v. Aslam (2021), holding that Uber drivers were "workers" within the meaning of UK employment law and entitled to minimum wage and holiday pay protections, has been influential in framing the debate in many countries. The EU Platform Work Directive, adopted in 2024, establishes a presumption of employment status for platform workers across EU member states, shifting the burden of proof to platforms to demonstrate that workers are genuinely self-employed. These international developments provide important comparative material for the development of Bangladesh's emerging legal framework for platform workers.

The philosophy of platform work regulation engages with fundamental questions about the relationship between technological innovation, labor market organization, and regulatory design. Platform advocates argue that the flexible, autonomous character of platform work represents a new form of work that does not fit the employment paradigm and that requires new legal categories rather than forced assimilation to the employment framework. Critics respond that the "flexibility" of platform work is largely illusory: platform workers are subject to algorithmic management and rating systems that exercise a form of control over their work that is in many respects more pervasive than conventional supervisory management, yet they bear all the risks of self-employment including the absence of income guarantees, social protection, and employment security.

In the Bangladesh context, the legal recognition of platform workers is particularly important given the rapid growth of ride-hailing services like Pathao and Shohoz and food delivery platforms, which have created a substantial new workforce of gig workers in Dhaka and other major cities. Many of these workers have invested significant capital in vehicles and equipment in order to participate in platform work, creating a level of asset commitment that further undermines the fiction of genuine entrepreneurial independence. Research by the Centre for Policy Dialogue in 2023 found that a majority of platform workers in Dhaka reported income instability, lack of access to healthcare, and inability to take leave without income loss, conditions that replicate many of the vulnerabilities of informal employment without the social embeddedness of traditional informal work.

### 7.3 Agricultural Workers and the Persistent Exclusion from Labour Law Coverage

Agricultural workers constitute the single largest category of workers in Bangladesh, employing an estimated forty to forty-five percent of the total workforce, and they are also the workers most comprehensively excluded from the protection of the Bangladesh Labour Act, 2006. The exclusion of agricultural workers from the main body of labour law has a long history rooted in

the colonial period, when the legal distinction between "industrial" and "agricultural" labour was deliberately maintained to preserve the flexibility of employers in the agrarian sector, which represented the primary source of export earnings.

The exclusion of agricultural workers from the BLA 2006 is not total: certain provisions of the Act apply to agricultural establishments, and the Bangladesh Agricultural Labourers (Minimum Wages) Act provides for minimum wages for agricultural workers. But the coverage is fragmented and the enforcement mechanisms for agricultural labour standards are weak compared to those applicable in the formal industrial sector.

The philosophy of agricultural worker exclusion has been extensively critiqued in the academic literature. The standard justification for differential treatment of agricultural workers, that the seasonal and nature-dependent character of agricultural work makes it impossible to apply the same standards as industrial work, has been largely rejected by labour law scholars as a rationalization for continuing exploitation. ILO standards on equal treatment for agricultural workers have progressively narrowed the scope for justifiable differentiation, and many countries have progressively extended general labour law coverage to agricultural workers.

In the Bangladesh context, the exclusion of agricultural workers from full labour law coverage is particularly problematic given the prevalence of sharecropping and other forms of dependent tenure farming that create relationships of economic dependency closely analogous to employment. The sharecropper who cultivates a landowner's land on a fifty-fifty sharing arrangement is in many respects more economically dependent than a factory worker: the sharecropper has no negotiating power over the terms of the sharing arrangement, bears all the risks of agricultural production, and is vulnerable to eviction and loss of livelihood at the landowner's will. Yet the legal framework treats this relationship as a tenancy rather than an employment, placing it outside the scope of labour law and within the scope of land tenancy law, which has its own inadequate protections.

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## CHAPTER EIGHT: ENFORCEMENT, INSTITUTIONAL MECHANISMS, AND THE POLITICS OF IMPLEMENTATION

### 8.1 The Department of Inspection for Factories and Establishments: Capacity, Coverage, and Challenges

The primary institutional mechanism for enforcing child labour law and other labour standards in Bangladesh is the Department of Inspection for Factories and Establishments (DIFE), established under the Department of Inspection for Factories and Establishments Act, 2015. DIFE is responsible for inspecting workplaces, investigating complaints, and initiating prosecutions for violations of the Labour Act. The effectiveness of DIFE as an enforcement institution is central to whether Bangladesh's child labour prohibitions have any practical effect.

The structural challenges facing DIFE are enormous. Bangladesh has hundreds of thousands of registered establishments and millions of informal workplaces, yet DIFE employs a total of

approximately 1,000 inspectors. The ratio of inspectors to workplaces is far below the level required for systematic and effective inspection, and is significantly below the ILO's recommended benchmark of one inspector per 40,000 workers (or one per 10,000 workers in industrial countries). This structural inadequacy means that the vast majority of workplaces are never inspected, and that informal sector establishments, where the majority of child labour is concentrated, are essentially never subject to formal inspection.

The Government of Bangladesh has recognized this inadequacy and committed in its roadmap to the ILO governing body to a programme of inspector recruitment and capacity-building. The number of DIFE inspectors has been increasing gradually since 2022, and a training programme with ILO support has been implemented to enhance inspectors' technical knowledge and their capacity to identify and respond to forced labour and child labour situations. As of mid-2025, the helpline system established by DIFE in 2020 was receiving and processing thousands of complaints per year, with a revamped version of the helpline operating with a team of six Labour Inspectors.

These improvements, while genuine, represent incremental progress toward a structural adequacy that remains very far off. The fundamental problem is not merely the number of inspectors but the design of the inspection system itself: a system designed to inspect formal registered establishments through periodic scheduled visits cannot effectively address child labour and forced labour in the informal economy, in private homes, or in dispersed agricultural and peri-urban workplaces. A more effective enforcement approach would integrate formal inspection with community-based monitoring, social welfare interventions, complaint mechanisms accessible to vulnerable workers, and coordination with local government bodies, police, and civil society organizations.

### 8.2 The Labour Courts: Jurisdiction, Access, and Effectiveness

The Labour Courts established under Chapter XX of the Bangladesh Labour Act, 2006, have jurisdiction over disputes arising from the Act's provisions, including violations of child labour prohibitions. The Labour Court system consists of Labour Courts at the district level and the Labour Appellate Tribunal at the national level. The courts apply the procedural framework of the Bangladesh Code of Civil Procedure, with some modifications appropriate to the labour context.

The Labour Courts have been consistently criticized for their delays, their inaccessibility, and their failure to provide effective remedies for vulnerable workers. As of 2024, Labour Courts across Bangladesh were dealing with enormous case backlogs, with cases regularly pending for three to five years before resolution. The cost of litigation, combined with the time and logistical challenges of accessing courts that are located in district headquarters far from where many workers live and work, effectively prevents most vulnerable workers from using the Labour Court system as a means of asserting their rights.

The 2025 Labour Act Amendment Ordinance has introduced alternative dispute resolution (ADR) mechanisms as a mandatory preliminary step in the resolution of employment disputes. The ADR framework requires that disputes must first be submitted to negotiation, mediation, or

arbitration before judicial proceedings can be initiated. The establishment of independent dispute resolution centres is also contemplated. These ADR provisions have the potential to provide faster and less expensive dispute resolution for some categories of disputes, but they also raise concerns about the power imbalance between employers and individual workers in informal dispute resolution contexts, where workers may lack the knowledge, confidence, and support to effectively assert their rights.

A tripartite Joint Declaration signed on 1 December 2024, between the Ministry of Labour and Employment, the National Coordination Committee for Workers Education (NCCWE), and the Bangladesh Employers' Federation (BEF) in the presence of the ILO, committed all parties to overhauling the ADR framework and establishing well-resourced conciliation and arbitration mechanisms. The fourth session of the High-level Tripartite Conference in October 2025 focused specifically on effective social dialogue as a lever for inclusive and sustainable labour reforms, demonstrating a continuing institutional commitment to improving dispute resolution systems.

### 8.3 Child Labour Courts, Special Tribunals, and Specialized Adjudication

The specialized adjudication of child labour and trafficking cases raises important questions about the institutional design of the justice system. The Children Act, 2013, establishes Children's Courts with jurisdiction over cases involving children as victims or offenders, and provides for child-friendly procedures including closed hearings, confidentiality protections, and the appointment of trained child welfare officers to assist the court.

The Human Trafficking Deterrence and Suppression Act, 2012, establishes specialized anti-trafficking tribunals and provides for victim-sensitive procedures including the right to give testimony by video link, the prohibition of re-traumatizing cross-examination, and the provision of victim support services.

These specialized institutional mechanisms represent an important recognition that cases involving child labour and trafficking victims require a different approach from ordinary criminal and civil proceedings. However, the capacity of these specialized institutions is severely limited by the familiar resource constraints: insufficient numbers of trained judges and child welfare officers, inadequate witness protection and victim support services, and case backlogs that prevent prompt resolution.

The jurisprudential case for specialized child labour courts deserves detailed consideration. Specialist courts can develop expertise in the complex factual and legal issues that arise in child labour and trafficking cases, including the assessment of age, the evaluation of consent, the identification of coercion, and the calculation of appropriate remedies. They can develop child-sensitive procedures that minimize re-traumatization and maximize the participation of child witnesses and victims. And they can develop a coherent jurisprudence through consistent decision-making that provides guidance to enforcement agencies and potential victims.

The case against specialization raises concerns about the fragmentation of the justice system, the risk of capture by particular ideological or institutional interests, and the danger that a specialized focus on certain categories of harm may distort enforcement priorities. These

concerns are real but, on balance, are outweighed by the case for specialization in the context of child labour and trafficking, given the distinct and complex legal and factual issues involved and the particular vulnerability of the victims.

### 8.4 The Role of Civil Society: NGOs, Trade Unions, and Community Organizations

Civil society organizations, including national and international NGOs, trade unions, community organizations, and religious institutions, play an indispensable role in addressing child labour and forced labour in Bangladesh. These organizations complement and in many respects exceed the state's enforcement capacity, through community-based monitoring, victim identification and support, legal aid provision, and advocacy for policy reform.

BRAC, the world's largest NGO and a Bangladeshi institution, has implemented extensive programmes addressing child labour, including non-formal education for child labourers and their families, livelihood support for vulnerable families, and community sensitization campaigns. BRAC's experience demonstrates that community-based approaches that combine direct service provision with advocacy and social mobilization can produce significant and sustained reductions in child labour.

The Bangladesh Shishu Adhikar Forum (BSAF), a civil society network focused on children's rights, has been an important voice for legislative reform and for monitoring the implementation of child labour law. The National Domestic Women Workers Union (NDWWU) has, despite its small size and limited resources, played an important role in organizing domestic workers and representing their interests in the policy debates that led to the 2025 recognition of domestic workers in the Labour Act.

Trade unions in the formal sector have historically not addressed child labour in the informal economy as a priority issue, in part because the interests of formal sector workers and informal sector child workers do not always align. However, the IndustriALL Global Union and its Bangladesh affiliates have increasingly engaged with supply chain child labour as part of their broader platform for sustainable supply chain standards, and the Bangladesh Independent Garment Workers Union Federation has adopted positions on child labour that go beyond the formal garments sector.

The relationship between civil society and the state in addressing child labour is complex and sometimes fraught. Civil society organizations that document and publicize child labour violations may be seen by the state as creating reputational problems rather than contributing to solutions, particularly when their reports are taken up by international buyers as grounds for trade sanctions. The political economy of the international pressure system, in which trade conditionality is the main enforcement mechanism for international labour standards, creates perverse incentives that reward visible formal sector compliance while allowing informal sector abuses to continue unaddressed.

# CHAPTER NINE: THE INTERNATIONAL DIMENSIONS: ILO STANDARDS, TRADE CONDITIONALITY, AND SUPPLY CHAIN GOVERNANCE

## 9.1 ILO Conventions and Their Domestic Implementation: A Critical Assessment

Bangladesh's engagement with the international labour standards system of the ILO has been extensive and, in recent years, significantly deepened. The country's ratification record now stands at 39 conventions including all 10 fundamental conventions, placing it among the better-performing developing countries in terms of formal adherence to international standards. The ratification of ILO Convention No. 138 in March 2022, Convention No. 182 in 2001, and the November 2025 ratification of Conventions Nos. 155, 187, and 190 represent substantive commitments with concrete implications for domestic law reform.

The relationship between ILO convention ratification and domestic law implementation is, however, not automatic or straightforward. Under Bangladesh's constitutional framework, international treaties do not automatically become part of domestic law: their incorporation requires either specific implementing legislation or executive action. The 2025 Labour Act Amendment Ordinance was explicitly described by Law Adviser Asif Nazrul as designed to "align the labour law with several ILO conventions," and the Ordinance incorporates most of the principal obligations of Conventions Nos. 155, 187, and 190. But the broader alignment of domestic law with all 39 ratified conventions remains a work in progress, and significant gaps persist in relation to Convention No. 138 (the minimum age for employment remains fourteen rather than the Convention's standard of fifteen), Convention No. 87 (freedom of association restrictions in certain sectors), and Convention No. 98 (collective bargaining rights).

The ILO's supervisory machinery, including the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Conference Committee on the Application of Standards, and the Committee on Freedom of Association, provides an ongoing mechanism for monitoring Bangladesh's compliance with its ratified conventions and for generating pressure for reform. Bangladesh has been the subject of numerous observations and direct requests from the CEACR, including repeated comments on the gap between the minimum age for employment under the BLA (fourteen years) and the Convention No. 138 standard (fifteen years), on the inadequacy of enforcement mechanisms for child labour prohibitions, and on the exclusion of agricultural and domestic workers from the full scope of labour law protection.

The Article 26 complaint filed against Bangladesh in June 2019 by five worker representatives from the International Trade Union Confederation, alleging failure to comply with Conventions Nos. 81 (Labour Inspection), 87 (Freedom of Association), and 98 (Right to Organise and Collective Bargaining), represents a more serious form of ILO engagement. In response to this complaint, the then Awami League government formulated a five-year Labour Sector Roadmap (2021-2026) committed to a programme of reform. The discussion of progress under this roadmap at successive ILO Governing Body sessions has created an ongoing forum for international scrutiny of Bangladesh's labour law compliance. The interim government under Professor Yunus has engaged actively with this process, and the March 2026 ILO Governing Body session saw significant international support for Bangladesh's recent reform efforts, with

47 countries congratulating Bangladesh and expressing support for its commitment to ILO standards.

### 9.2 Trade Conditionality and Its Effects: GSP, AGOA, and the Geopolitics of Labour Standards

The use of trade policy as a mechanism for promoting labour standards in developing countries is one of the most controversial issues in international labour law, and Bangladesh has been at the centre of this controversy for decades. Trade conditionality, the linking of market access to compliance with labour standards, creates a complex set of incentives that can promote formal legal reform while potentially distorting domestic policy priorities and creating adversarial relationships between labour advocates and trade negotiators.

The United States' Generalized System of Preferences (GSP), which had provided preferential market access for Bangladeshi exports, was suspended in June 2013 in response to labour rights concerns, particularly in the aftermath of the Rana Plaza disaster. The EU's GSP+ scheme, which provides enhanced preferential access in exchange for adherence to a set of international conventions including ILO core labour standards, has been an important driver of Bangladesh's reform agenda. The EU's Sustainability Impact Assessment for Bangladesh, conducted in preparation for Bangladesh's graduation from Least Developed Country (LDC) status, has highlighted the need for continued labour reform to maintain access to EU markets under the GSP+ framework.

The relationship between trade conditionality and effective labour reform is theoretically and empirically complex. On one hand, trade pressure creates political space for domestic reformers to overcome the resistance of employers and their political allies, by linking labour reform to concrete economic interests. On the other hand, trade conditionality can distort reform priorities by focusing on the formal sector and the export manufacturing industries that are visible to international buyers, while leaving the informal economy and domestic sector entirely outside the reform agenda. The experience of the 1995 BGMEA-ILO-UNICEF MOU, which successfully reduced visible child labour in the formal garments sector while potentially increasing child labour in less visible sectors, illustrates this risk.

The broader geopolitical context of trade conditionality matters as well. The use of labour standards as a justification for trade restrictions can be, and frequently is, perceived by developing countries as a form of disguised protectionism, using the language of human rights to advance the commercial interests of producers in wealthy countries who face unfair competition from low-cost developing country producers. This perception is not entirely without foundation: the application of trade conditionality has historically been highly selective, focusing on competitors in sectors of commercial significance rather than on the worst labour rights violators. And the application of conditionality to individual developing countries without equivalent conditions on the domestic industries of the countries imposing the conditions creates a structural injustice that undermines the legitimacy of the entire conditionality framework.

### 9.3 Supply Chain Governance: The Role of Global Brands and International Retailers

The governance of labour standards in global supply chains has emerged as one of the most important and contested areas of international labour law in the past two decades. The concentration of global garment retail in a small number of large brands and retailers, combined with the dispersal of production across thousands of factories in dozens of developing countries, creates a structure in which the buyers who capture most of the economic value of garment production are organizationally remote from the production conditions that generate that value.

The corporate social responsibility (CSR) framework that emerged in the 1990s as a response to consumer and NGO pressure sought to address this disconnect through voluntary commitments by brands to codes of conduct, supplier monitoring, and social compliance programmes. The Bangladesh Accord on Fire and Building Safety, adopted in the aftermath of the Rana Plaza disaster in 2013 and later transformed into the International Accord for Health and Safety in the Textile and Garment Industry, represents the most ambitious example of binding supply chain governance in the garments sector. The Accord's legally binding provisions, which require signatory brands to fund factory safety inspections, remediation, and worker training, have produced significant improvements in building and fire safety in the factories covered by the Accord.

The Accord's approach to child labour has been more limited than its approach to safety: the Accord's inspection programme focuses primarily on structural and fire safety rather than on employment conditions including child labour. However, the Accord's governance framework, including its independent monitoring, complaint mechanisms, and binding commitments, provides a model that could potentially be extended to child labour and other employment conditions.

The French Duty of Vigilance Law (2017), the UK Modern Slavery Act (2015), the German Supply Chain Due Diligence Act (2023), and the EU Corporate Sustainability Due Diligence Directive (2024) represent a new generation of legal instruments that impose due diligence obligations on companies sourcing from global supply chains, including obligations to identify, prevent, and mitigate human rights violations including child labour and forced labour in their supply chains. These legislative developments have significant implications for Bangladeshi exporters, since compliance with due diligence requirements will become a condition of market access to the EU and other major markets.

The implications of supply chain due diligence legislation for Bangladesh's child labour policy are double-edged. On the positive side, these instruments create new incentives for global brands to invest in their suppliers' compliance with child labour and forced labour standards, potentially bringing additional resources and expertise to the task of eliminating worst-case labour practices. On the negative side, due diligence requirements focused on risk mitigation may lead brands to exit from markets with high child labour risk rather than investing in improvement, with potentially devastating consequences for employment in those sectors.

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## CHAPTER TEN: THE 2025 LABOUR ACT AMENDMENT ORDINANCE: DETAILED ANALYSIS OF CHILD LABOUR AND VULNERABILITY-RELATED PROVISIONS

## 10.1 Context and Background: The July Revolution, the Labour Reform Commission, and the Reform Agenda

The Bangladesh Labour Act (Amendment) Ordinance, 2025, promulgated on 17 November 2025, represents the most comprehensive reform of Bangladesh's labour law since the enactment of the original Bangladesh Labour Act in 2006. The context in which this reform was enacted is inseparable from its content: the Ordinance is a product of the political transformation that followed the July Revolution of 2024, in which mass popular protests led by students and workers overthrew the Awami League government of Sheikh Hasina and brought an interim government under Professor Muhammad Yunus to power.

The Labour Reform Commission, established by government notification on 17 November 2024 (exactly one year before the promulgation of the Amendment Ordinance, a symbolically resonant coincidence), was charged with formulating comprehensive recommendations for labour law reform. The Commission's work drew upon the expertise of labour law scholars, trade union representatives, employers' federation representatives, and civil society organizations, and produced recommendations that addressed a wide range of issues including child labour, domestic workers, platform workers, trade union rights, occupational safety and health, and violence and harassment.

The political context of the reform is important to understand. The July Revolution was not simply a political transition: it was a moment of significant social mobilization in which the demands of workers, including garment workers, street vendors, and domestic workers, played a significant role. The interim government's commitment to labour law reform reflects not only the technocratic recommendations of the Labour Reform Commission and the pressure of international donors and trade partners, but also the political debt owed by the new government to the workers whose participation in the July Revolution made the political transition possible.

The Amendment Ordinance's preamble explicitly acknowledges the connection between the July Revolution and the reform: it states that the reform is intended, among other things, in recognition of workers' roles in past resistance movements. This acknowledgment of the political dimension of labour law reform is unusual in legislative preambles, which typically present reform as a technocratic response to identified legal deficiencies. Its inclusion signals an understanding that labour law is not merely a technical legal matter but is deeply embedded in the political economy of power, resistance, and social change.

## 10.2 The Amendment's Treatment of Child Labour: Key Provisions and Critical Assessment

The 2025 Amendment Ordinance includes several provisions directly relevant to child labour. The most significant are the strengthened penalty provisions for employing children, the expanded scope of application to cover domestic workers and non-profit organization workers, the formalization of the hazardous work list expansion, and the enhanced inspection powers.

The strengthened penalty provisions address a long-standing criticism of the Labour Act: that the penalties for child labour violations were too low to constitute a meaningful deterrent. The 2025

Ordinance significantly increases the maximum fines and imprisonment terms applicable to employers who violate the child labour provisions, bringing the sanctions into line with the seriousness of the offence. The precise figures under the Ordinance will require confirmation as implementing notifications are published, but the direction of reform is clearly toward significantly enhanced deterrence.

The extension of the Act's scope to cover domestic workers is, as emphasized above, the single most important provision of the 2025 Ordinance from the perspective of child labour protection. The recognition of domestic workers as workers entitled to the Act's protections creates a legal basis for addressing the widespread exploitation and abuse of child domestic workers, who constitute one of the most vulnerable and previously invisible categories of child labourers.

The Ordinance's provisions on violence and harassment, enacted in conjunction with Bangladesh's ratification of ILO Convention No. 190 on 20 November 2025, are also directly relevant to child labour protection. The 2025 Ordinance introduces the definitions of "violence and harassment," "gender-based violence and harassment," and "sexual harassment" into the Act, and prohibits all forms of violence and harassment in the workplace. The requirement that each workplace form a committee to address complaints of discrimination, violence, and harassment creates an institutional mechanism for responding to workplace abuse that has particular relevance for child workers, who are among the most vulnerable to such abuse.

The Ordinance's recognition of gig and platform workers as entitled to legal protection is significant for child labour prevention, since platform-based work has become an important source of employment for adolescents and young adults, and the absence of legal protection in this sector created conditions of vulnerability that could shade into child labour exploitation.

### 10.3 Remaining Gaps and Critical Perspectives on the 2025 Reform

Despite its considerable achievements, the 2025 Amendment Ordinance leaves important gaps in the child labour and forced labour framework that require critical attention.

First, the minimum age for employment remains fourteen under the amended Act, one year below the ILO Convention No. 138 standard of fifteen years for general employment. This discrepancy is technically a violation of Bangladesh's international obligation under Convention No. 138 and has been repeatedly noted by the CEACR. The Government of Bangladesh has indicated awareness of this gap but has not committed to an early amendment to raise the minimum age to fifteen.

Second, the coverage of agricultural workers remains limited. The vast majority of child labour occurs in the informal agricultural sector, and the amended Act's provisions on child labour do not effectively reach this sector. A comprehensive approach to child labour elimination requires specific provisions addressing agricultural child labour, including age verification mechanisms, rest and educational provisions for adolescent agricultural workers, and specific prohibitions on the hazardous forms of agricultural work in which children are commonly engaged.

Third, the enforcement infrastructure has not been fundamentally transformed by the 2025 Amendment. While the Ordinance strengthens the legal framework, the Department of Inspection for Factories and Establishments remains severely understaffed relative to the scale of the problem it is meant to address, and the inspection methodology remains primarily focused on formal sector establishments.

Fourth, the social protection and poverty reduction measures that are essential for sustainable child labour elimination are not part of the Labour Act and cannot be addressed through labour law reform alone. The persistence of child labour in Bangladesh is ultimately a function of poverty and the absence of viable alternatives, and no amount of legislative reform will eliminate child labour if families continue to depend on children's economic contributions for basic survival.

Fifth, and perhaps most fundamentally, the implementation of the 2025 reforms requires not merely publication of the Ordinance and gazette notifications but a comprehensive programme of awareness-raising, capacity-building, and institutional development that takes years to deliver results. The risk that the 2025 reforms will remain largely aspirational, transforming the text of the law without transforming the reality of workers' lives, is very real, and it requires sustained political commitment, adequate resource allocation, and effective monitoring.

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## CHAPTER ELEVEN: MIGRANT WORKERS AND VULNERABILITY: LABOUR RECRUITMENT, TRAFFICKING, AND THE INTERNATIONAL DIMENSION OF BANGLADESHI LABOUR VULNERABILITY

### 11.1 The Migration Economy and Its Legal Architecture

Bangladesh is one of the world's major sources of international labour migrants, with approximately ten to twelve million Bangladeshis working abroad, primarily in the Gulf Cooperation Council (GCC) countries, Malaysia, Singapore, and Southeast Asian destinations. Remittances from migrant workers constitute the second largest source of foreign exchange earnings after garments exports, and the migration economy is deeply embedded in the political economy and social structures of Bangladesh.

The legal framework governing labour migration from Bangladesh is centred on the Overseas Employment and Migrants Act, 2013, which replaced the earlier Emigration Ordinance, 1982. The Act establishes the legal basis for the regulation of private recruitment agencies, the rights of migrant workers, and the institutional framework for labour migration governance. The Ministry of Expatriates' Welfare and Overseas Employment is responsible for oversight of the migration system, and the Bureau of Manpower, Employment and Training (BMET) administers the operational aspects of migration governance.

The recruitment fee system is one of the most significant sources of vulnerability for Bangladeshi migrant workers. Migrants typically pay substantial recruitment fees, often equivalent to several months of anticipated earnings abroad, to private recruitment agencies in

order to secure employment abroad. These fees are frequently financed by loans from moneylenders at high interest rates, creating a debt situation that makes migrants highly vulnerable to exploitation in their destination countries. A migrant who has paid large fees to secure a job and whose debt repayment depends on maintaining employment abroad has very limited ability to resist exploitation or to leave an abusive employment situation.

The vulnerability generated by the recruitment fee system has been extensively documented by the ILO, by human rights organizations, and by academic researchers. The specific dynamics of this vulnerability are complex: the recruitment fee creates a debt that makes leaving a bad job economically catastrophic, transforming a relationship that is formally free labour into one that is practically coerced. This situation is particularly severe for Bangladeshi women migrant workers, who are disproportionately employed as domestic workers in GCC countries under the kafala (sponsorship) system, which ties the migrant's legal status in the destination country to a specific employer and makes changing employment legally and practically very difficult.

## 11.2 The Kafala System and Its Legal Critique

The kafala (sponsorship) system, prevalent in Gulf Cooperation Council countries and in Lebanon, is a labour migration governance framework that makes a migrant worker's legal residence and work authorization contingent on maintaining employment with a specific sponsor employer. The system gives the sponsoring employer enormous power over the migrant worker: if the worker leaves the employer for any reason, including in response to abuse or exploitation, the worker loses their legal status and becomes subject to deportation. This power structure creates conditions in which employers can exploit migrants with virtual impunity, knowing that the migrant's fear of deportation and loss of livelihood prevents them from seeking legal redress.

The jurisprudential critique of the kafala system has been developed extensively by human rights scholars and has been the subject of recommendations from UN treaty bodies, ILO supervisory committees, and regional human rights bodies. The kafala system has been characterized as incompatible with the prohibition of forced labour in ILO Convention No. 29, since the combination of debt bondage, document confiscation, and legal status dependency creates conditions that satisfy the ILO's indicators of forced labour. The Arab Charter on Human Rights and various domestic constitutional provisions of receiving countries have also been invoked as legal bases for challenging the kafala system.

The significance of the kafala system for Bangladesh's domestic labour law framework lies primarily in the interaction between domestic vulnerability and destination country vulnerability. Bangladeshi migrant workers who are already in debt before they leave the country, who lack information about their rights under destination country law, and who have no effective consular protection from the Bangladeshi state, are placed in a position of acute vulnerability by the kafala system. Addressing this vulnerability requires action at multiple levels: reform of the domestic recruitment fee system, strengthening of pre-departure training and information, enhancement of consular protection mechanisms, and bilateral engagement with destination countries to push for reform of the kafala system.

## 11.3 The Rights of Migrant Workers under International Law and Domestic Law

The international legal framework for the protection of migrant workers includes the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), adopted in 1990. Bangladesh has not ratified the ICRMW, a significant omission given the importance of migration to Bangladesh's economy and the vulnerability of its migrant workers. The ICRMW provides comprehensive rights protections for migrant workers including the right to fair wages, safe working conditions, freedom from forced labour, and access to justice in both sending and receiving countries.

The ILO's Labour Migration Conventions, including Convention No. 97 on Migration for Employment (Revised) and Convention No. 143 on Migrant Workers (Supplementary Provisions), provide additional international standards for the protection of migrant workers. Bangladesh has ratified Convention No. 97 but not Convention No. 143, and the implementation of Convention No. 97 has been incomplete in several important respects.

The domestic legal framework for the protection of migrant workers, centred on the Overseas Employment and Migrants Act, 2013, provides a set of rights and obligations for migrants, recruitment agencies, and employers. The Act establishes the Wage Earners' Welfare Fund, which provides a range of benefits for migrants and their families, including insurance against death and disability, support for repatriation of remains, and educational scholarships for migrants' children. The Act also establishes the Probashi Kallyan Bank, a specialized financial institution intended to provide affordable credit for migrants, partly addressing the recruitment fee financing problem.

Despite these provisions, the practical protection of migrant workers' rights remains severely limited by enforcement capacity, corruption in the recruitment industry, inadequate consular protection in destination countries, and the political sensitivity of bilateral labour relations. The migrant worker who is abused, defrauded, or subjected to forced labour in a GCC country faces enormous practical obstacles in seeking legal redress: language barriers, fear of deportation, lack of money for legal fees, distance from legal services, and the indifference or hostility of both the destination country legal system and the Bangladeshi consulate.

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## CHAPTER TWELVE: JURISPRUDENTIAL CONTROVERSIES AND THEORETICAL DEBATES IN CHILD LABOUR AND FORCED LABOUR LAW

### 12.1 The Abolitionist versus Regulatory Debate: A Critical Engagement

The global debate on child labour policy is fundamentally divided between two positions that can be characterized as abolitionist and regulatory. The abolitionist position, associated with the ILO's fundamental conventions framework and with most mainstream international development organizations, holds that child labour is intrinsically harmful to children's development and should be eliminated through a combination of legal prohibition, educational investment, and social protection. The regulatory position, associated with certain strands of development economics and with some anthropological critiques of the international child labour standards framework, holds that child labour in moderate forms may be economically rational and not

necessarily harmful, particularly in the context of extreme poverty, and that its regulation rather than elimination may be more appropriate in the short term.

The regulatory position has been articulated in influential work by economists including Paul Grootaert and Ravi Kanbur, who have argued that blanket prohibitions on child labour, imposed without regard to the economic context and the alternatives available to children and their families, can leave affected families worse off than moderate and well-regulated child labour would. This argument draws upon the insight that for families on the economic margin, the loss of a child's income can mean genuine destitution, and that a policy response that simply removes the income without providing alternatives is not a pro-child welfare response.

The abolitionist response to this argument is that the regulatory framework is both empirically and normatively problematic. Empirically, the evidence that child labour is economically rational for families is mixed: research consistently shows that the long-term educational and health costs of child labour substantially outweigh the short-term income benefits, and that families who invest in children's education rather than child labour end up better off in the long run. Normatively, the regulatory argument effectively asks children to bear the costs of their families' poverty, which is a form of exploitation that cannot be justified by pointing to the poverty itself.

The debate has particular resonance in the Bangladesh context. Bangladesh is a country in which poverty, while significantly reduced over the past three decades, remains extensive and where families at the economic margin genuinely do rely on children's economic contributions. A blanket policy of child labour elimination without adequate accompanying social protection and educational investment has been shown, in the experience of the 1995 BGMEA-ILO-UNICEF MOU, to produce harmful displacement effects. At the same time, the normative argument for child labour elimination is compelling, and Bangladesh's own commitment, reflected in national policy documents and international obligations, is to eliminate all forms of child labour. The tension between these positions is best resolved not by abandoning the eliminationist goal but by insisting on the complementary social investment that makes elimination both feasible and welfare-enhancing.

## 12.2 The "Child Rights" versus "Family Autonomy" Tension in Legal Doctrine

A significant jurisprudential tension in child labour law arises between the child rights framework, which conceptualizes children as individual rights-bearers entitled to protection from exploitation and to the conditions necessary for their development, and the family autonomy framework, which treats the family as the primary unit of social organization and respects parental authority over children's work and education.

The family autonomy framework has deep roots in liberal political philosophy, particularly in the tradition associated with John Locke and John Stuart Mill, which regards the family as a private sphere into which the state should not intrude except in cases of clear abuse. Applied to child labour, this framework would generally support parental authority over children's work and resist state intervention in family work arrangements, particularly in agricultural and craft production contexts.

The child rights framework, grounded in the UNCRC and in the human rights tradition more broadly, holds that children have independent rights that exist alongside and may sometimes override the rights of parents. The UNCRC explicitly recognizes the right of children to be free from economic exploitation, the right to education, and the right to have their best interests treated as a primary consideration. These rights can and do conflict with parental authority in cases where parents make decisions about children's work and education that are harmful to the child's interests.

The legal system in Bangladesh has not fully resolved this tension. The Children Act, 2013, establishes a framework that broadly aligns with the child rights perspective, treating children's best interests as paramount and providing for state intervention in cases of abuse and exploitation. The Bangladesh Labour Act's family enterprise exception, however, reflects a degree of deference to family autonomy in relation to children's work within family economic units.

The resolution of this tension requires a nuanced approach that respects legitimate family autonomy in relation to mild, age-appropriate, educationally compatible participation in family economic activity, while firmly rejecting any claim of family autonomy as a justification for harmful exploitation. The key criterion is not whether the child is working for a family member but whether the work is harmful to the child's development, education, and welfare. Work that is genuinely compatible with full school attendance, that does not endanger the child's health or safety, and that involves a degree of educational value in the context of family economic life is qualitatively different from exploitative child labour even if it involves a family relationship.

### 12.3 Structural Injustice and Individual Rights: The Macro and Micro Dimensions of Child Labour Analysis

One of the most significant contributions of recent scholarship to the theoretical analysis of child labour has been the development of structural injustice theory as a framework for understanding the systemic causes of child labour and the responsibilities that flow from those causes. Iris Marion Young's structural injustice theory, developed in her late work "Responsibility for Justice" (2011) and applied to global supply chain governance by scholars including Sabina Dent and Nien-he Hsieh, holds that structural injustice exists when social processes put large groups of persons under systematic threat of harm while enabling others to accumulate power and advantage.

Applied to child labour, structural injustice theory identifies the global economic structures that generate child labour: the global value chain organization of the garments and other industries that allows wealthy brands to capture the majority of value while pushing production costs and risks onto factories and suppliers in Bangladesh; the fiscal and monetary policies promoted by international financial institutions that prioritize macroeconomic stability over social investment; the gendered structures of property rights and financial access that leave women and their children particularly vulnerable; and the political structures that allow employer interests to dominate labour policy in Bangladesh.

Structural injustice theory has important implications for the question of responsibility. It suggests that the responsibility for child labour does not rest solely with the individual employers who violate the law or the individual parents who send children to work: it rests also with the structural actors, including global brands, international financial institutions, and the governments of wealthy countries, whose decisions shape the structures within which child labour flourishes. This analysis supports the due diligence legislation discussed above as an instrument for reallocating responsibility toward structural actors.

The micro dimension of child labour analysis focuses on the individual-level decisions, behaviours, and relationships that generate child labour in specific contexts, and it is essential for effective policy design. Understanding why specific families send specific children to work in specific sectors requires attention to the particular economic circumstances, social norms, educational opportunities, and individual histories of those families and children. Generic interventions designed without this contextual knowledge are unlikely to be effective.

The most effective child labour interventions in Bangladesh and internationally have been those that combine structural approaches, addressing the macroeconomic and institutional conditions that generate child labour, with contextual approaches, addressing the specific circumstances of at-risk families and children. Conditional cash transfer programmes that provide income support to families in exchange for school attendance, such as the Stipend Programme for Poor and Female Students and the School Feeding Programme implemented in Bangladesh, exemplify this combined approach: they address both the economic incentive for child labour and the educational alternative to it.

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## CHAPTER THIRTEEN: REFORM AGENDA FOR CHILD LABOUR, FORCED LABOUR, AND VULNERABLE WORKER PROTECTION IN BANGLADESH

### 13.1 Principles for a Comprehensive Reform Framework

Any serious reform agenda for child labour, forced labour, and vulnerable worker protection in Bangladesh must be guided by a set of coherent principles derived from the philosophical, jurisprudential, and empirical analysis undertaken in this Part. The following principles, grounded in the various philosophical traditions discussed in Chapter One, provide the normative framework for the reform proposals set out in this Chapter.

The first principle is the rights-based approach: every child has inherent rights to education, health, protection from exploitation, and a development environment that enables the realization of their capabilities. These rights are not contingent on family economic circumstances or on the pragmatic calculations of policymakers: they are inherent in the child's humanity and generate corresponding obligations on the state and on all actors whose decisions affect children's lives.

The second principle is the structural approach: effective child labour elimination requires addressing the structural conditions that generate child labour, including poverty, inadequate educational provision, the absence of social protection, and the power structures of the global

economy that transfer the costs of production onto the most vulnerable actors in global supply chains.

The third principle is the integrated approach: child labour policy cannot be effectively pursued through labour law reform alone. It requires coordination between labour law, education law, social protection law, family law, criminal law, and economic policy. Labour law reform that is not complemented by investment in quality education, accessible social protection, and rural livelihood diversification will produce incomplete and temporary results at best.

The fourth principle is the participatory approach: effective reform requires meaningful participation by affected communities, including children where appropriate, parents, workers, employers, and civil society organizations. Top-down reforms designed without adequate consultation with those they are intended to protect are unlikely to be well-designed or effectively implemented.

The fifth principle is the non-regression principle: reforms must not weaken existing protections, and the pace of implementation must be managed so that improvements in formal law are matched by improvements in actual practice. The history of Bangladesh's labour law is unfortunately replete with examples of formal legal reform that has not translated into improvements in workers' conditions.

### 13.2 Legislative Reform Proposals

The legislative reform priorities for child labour and forced labour in Bangladesh may be organized under several headings.

On minimum age, the minimum age for employment should be raised from fourteen to fifteen years, in full compliance with ILO Convention No. 138. This reform would bring Bangladesh into alignment with its international obligations and would provide better protection for children in the fourteen to fifteen age range who are currently at particular risk of employment in hazardous conditions. The reform should be accompanied by measures to ensure that children in the fourteen to fifteen age range have access to quality education and that families who would otherwise send these children to work receive adequate social protection support.

On domestic workers, the recognition of domestic workers in the 2025 Ordinance must be followed by comprehensive implementing provisions addressing wage standards, working hours, rest periods, access to complaint mechanisms, freedom of association, and specific protections for child domestic workers. A dedicated domestic workers chapter should be added to the Labour Act or, alternatively, a specific Domestic Workers (Protection and Regulation) Act should be enacted to address the particular circumstances of this category of worker.

On forced labour and debt bondage, the legislative framework should be strengthened through amendments to the Labour Act and to the criminal law to provide more effective tools for addressing debt bondage and other forms of forced labour. These amendments should include: a clear definition of debt bondage that reflects the reality of the dadon system in the brick kiln and other industries; criminal penalties for creditors who use debt to coerce labour; a civil remedy

allowing workers to have debt bondage contracts declared void and unenforceable; and a government programme to provide alternative credit facilities for workers who are currently dependent on advances from employers.

On platform workers, the 2025 recognition of gig and platform workers in the Labour Act must be given concrete content through implementing regulations that address the classification of platform workers, their entitlement to minimum wages and social protection, the duty of platforms to provide safe working conditions, and the rights of platform workers to organize and bargain collectively.

On agricultural workers, a comprehensive agricultural labour chapter should be added to the Labour Act, addressing minimum wages, working hours, occupational safety and health, child and adolescent labour, and trade union rights for agricultural workers. The current fragmented and inadequate regulation of agricultural labour is inconsistent with Bangladesh's international obligations and with the constitutional commitment to the emancipation of toiling masses.

On enforcement, the legislative framework for enforcement should be strengthened through amendment of the Labour Inspection Act to increase inspector numbers and resources, extend inspection coverage to informal and domestic workplaces through innovative mechanisms including community-based inspection and licensing of domestic work agencies, and establish a digital inspection management system to enhance accountability and coverage.

### 13.3 Institutional Reform Proposals

Legislative reform without institutional capacity to implement it is, as the history of Bangladesh's labour law amply demonstrates, merely aspirational. The following institutional reforms are essential for the effective implementation of the child labour and forced labour framework.

DIFE must be fundamentally strengthened and its inspection methodology reformed. The target should be to achieve an inspector-to-worker ratio that approaches international benchmarks over a five-year programme, with immediate priority given to the sectors with the highest rates of child labour and forced labour. Inspector recruitment should be accompanied by comprehensive training programmes, including specialized training on child labour identification, forced labour indicators, domestic worker protection, and victim-centred investigation techniques.

The Labour Court system must be reformed to provide faster, less expensive, and more accessible justice for vulnerable workers. This reform should include the establishment of fast-track procedures for child labour and forced labour cases, expansion of legal aid provision, mobile legal aid services in areas with high concentrations of informal sector workers, and the development of child-friendly procedures in cases involving child victims.

The anti-trafficking institutional framework should be strengthened through increased resources for the anti-trafficking tribunals, enhanced victim support services including safe houses, legal aid, and rehabilitation support, and improved coordination between police, labour inspectors, prosecutors, and social workers in identifying and responding to trafficking cases.

The Child Labour Welfare Council and district-level Child Labour Monitoring Committees, established under the 2014 legislation, should be reinvigorated with adequate resources, clear mandates, and regular monitoring and evaluation. These bodies have the potential to serve as important coordination mechanisms for child labour elimination but have been underperforming relative to their mandate.

Social protection reform is essential and cannot be accomplished within the Labour Act alone. Bangladesh's social protection system, including targeted programmes such as the Vulnerable Group Development Programme, the Employment Generation Programme for the Poorest, and the Child-Sensitive Social Protection initiatives, should be expanded and better targeted to reach the households most at risk of child labour. Coordination between the Ministry of Labour and Employment, the Ministry of Social Welfare, and the Ministry of Women and Children Affairs is essential for ensuring that social protection interventions are complementary to labour law enforcement.

### 13.4 International and Regional Cooperation Proposals

Bangladesh's child labour and forced labour challenges cannot be effectively addressed in isolation from the international and regional context. Several areas of international and regional cooperation deserve priority attention.

Bilateral engagement with GCC countries on the reform of the kafala system is a long-standing priority that has made limited progress. Bangladesh should strengthen its bilateral diplomatic engagement on labour rights, drawing upon the framework of the ILO-supported "Fair Recruitment" initiative and the Colombo Process consultation framework for Asian labour-sending countries. Bangladesh should also advocate for ratification and implementation of the ICRMW in destination countries, while itself ratifying the ICRMW.

Regional cooperation with India, particularly in relation to cross-border trafficking, is essential. India is the primary destination country for Bangladeshi trafficking victims, and effective anti-trafficking cooperation requires shared intelligence, coordinated border management, mutual legal assistance in trafficking prosecutions, and cooperation in the repatriation and rehabilitation of victims. The existing bilateral frameworks for India-Bangladesh cooperation should be strengthened to give greater priority to anti-trafficking collaboration.

Engagement with the European Union on the implementation of the Corporate Sustainability Due Diligence Directive and related instruments should be intensified, with the goal of ensuring that the EU's due diligence requirements create positive incentives for investment in Bangladesh's child labour elimination programme rather than simply driving brands to exit the Bangladeshi market. The EU should be encouraged to use its market leverage to support a comprehensive and sustained child labour elimination programme rather than simply penalizing non-compliance.

The ILO's technical assistance role should be sustained and deepened. The ILO's Improving Working Conditions in the Readymade Garment Sector Programme (RMGP) and the Advancing Decent Work in Bangladesh project have made important contributions to Bangladesh's labour

law reform, and their continuation and expansion are essential for the implementation of the 2025 Amendment Ordinance and the broader reform agenda.

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## CHAPTER FOURTEEN: PHILOSOPHICAL SYNTHESIS: TOWARDS A RIGHTS-BASED, CAPABILITY-ENHANCING, AND STRUCTURALLY AWARE APPROACH TO CHILD AND VULNERABLE WORKER PROTECTION IN BANGLADESH

### 14.1 Integrating Multiple Philosophical Frameworks: A Synthesis

The philosophical and jurisprudential analysis undertaken in this Part has drawn upon multiple theoretical traditions: the liberal-developmental conception of childhood and its limitations, the exploitation frameworks of Marxist and analytical philosophy, the republican theory of non-domination, the feminist critique of the gendered architecture of labour law, the capabilities approach, the children's rights framework, and the structural injustice theory of Young and others. Rather than identifying any single framework as definitively correct and applying it exclusively, this Part has sought to show how each framework illuminates different aspects of a complex reality.

The synthesis suggested by this analysis is a rights-based, capability-enhancing, and structurally aware approach to child and vulnerable worker protection. "Rights-based" signals the fundamental commitment to children and workers as rights-bearers whose rights must be taken seriously as genuine legal and moral obligations, not merely as policy preferences that can be traded off against economic efficiency. "Capability-enhancing" signals the understanding, drawn from the capabilities approach, that the purpose of rights protection is not merely to prohibit harm but to create conditions in which children and workers can develop and exercise their central human capabilities. "Structurally aware" signals the understanding, drawn from structural injustice theory and Marxist political economy, that child labour and forced labour are not individual aberrations but are generated and sustained by structural conditions that must be identified and addressed.

This synthesis has several important implications for the design of legal reform. First, it suggests that legal reform must be comprehensive and multi-level, addressing not only the prohibitions and penalties that characterize formal legal regulation but also the structural conditions of education, social protection, and economic opportunity that determine whether legal prohibitions can be effectively implemented. Second, it suggests that the effectiveness of legal reform must be evaluated not by the quality of the legal texts but by whether children's and workers' capabilities are actually enhanced and whether their rights are actually protected. Third, it suggests that legal reform is inherently political, since the structural conditions that generate child labour and forced labour reflect the power interests of particular actors, and changing those conditions requires political struggle as well as legal innovation.

### 14.2 The Pedagogical Value of Child Labour Law as a Window into the Larger System

Child labour law, for all its specific and technical character, serves as a remarkably instructive window into the larger architecture of labour law and into the deeper tensions of law and social regulation in Bangladesh. The study of child labour law reveals, in concentrated form, the fundamental tension between formal legal equality and substantive social inequality that Kahn-Freund identified as the defining jurisprudential tension of labour law. The child who "consents" to work in a hazardous occupation because the family has no other survival option is the paradigm case of the formal freedom and substantive compulsion that characterizes labour market participation for all vulnerable workers.

The study of child labour law also reveals the significance of the enforcement gap between formal legal provision and practical reality, a gap that is pervasive throughout Bangladesh's labour law but is particularly stark in relation to child labour and forced labour. Understanding why this gap exists, what interests are served by its persistence, what structural conditions perpetuate it, and what combination of legal, institutional, economic, and political changes are needed to close it, is essential for any serious engagement with the reform of Bangladesh's labour law.

The study of child labour law reveals the international dimensions of labour law, the way in which Bangladesh's domestic labour law is shaped by its integration into the global economy and by its obligations under international law. The relationship between ILO conventions, trade conditionality, supply chain governance, and domestic legislative reform that has been traced in this Part is a specific instance of the broader phenomenon of the globalization of labour standards, and understanding it is essential for appreciating both the possibilities and the limitations of domestic labour law reform.

And the study of child labour law reveals, perhaps most poignantly, the human stakes of the analytical enterprise. The children whose lives are addressed in this Part are not abstractions or legal categories: they are real human beings whose development, wellbeing, and futures are profoundly affected by the legal decisions described and analyzed here. The ultimate test of Bangladesh's child labour law is not whether it is formally compliant with international standards but whether it actually contributes to a world in which every child in Bangladesh can attend school, develop their capabilities, and grow into a free and flourishing adult. That test is still very far from being passed, and the work of reform remains urgent.

### 14.3 Connections to the Broader Themes of the Textbook

This Part of the textbook connects in important ways to the themes developed in earlier and subsequent parts. The analysis of child labour builds directly upon the historical foundations established in Parts One and Two, which traced the colonial legal heritage and the post-independence trajectory of Bangladesh's labour law, and showed how the persistent inadequacy of child labour protection is rooted in the political economy of the colonial and post-colonial state.

The analysis of forced labour and debt bondage connects to the discussion of wages and wage theft in Part Six, since debt bondage is in many cases a form of wage theft executed through financial rather than physical coercion. The discussion of domestic workers connects to the

analysis of gendered labour in Part Nine, which examined maternity protection and gender equality more broadly. The discussion of platform workers connects to the contemporary challenges of labour market regulation examined in Part Seven's treatment of working time in the digital economy.

The structural and political economy analysis developed in this Part provides essential context for the examination of the formal institutions of labour law enforcement examined in later parts: understanding why formal institutions fail requires the kind of structural and political analysis that child labour and forced labour provide in unusually clear terms.

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## CONCLUDING REMARKS ON PART ELEVEN

Part Eleven has offered a comprehensive, philosophically grounded, historically informed, and empirically engaged analysis of child labour, forced labour, and the protection of vulnerable workers in Bangladesh. The analysis has moved from the abstract philosophical foundations, through the historical development of the legal framework, to the detailed examination of current law and practice, and finally to a reform agenda grounded in both rights-based principles and structural realism.

The central conclusion of this Part is that Bangladesh's legal framework for the protection of child and forced labourers and other vulnerable workers has made genuine and important progress, particularly through the comprehensive 2025 Labour Act Amendment Ordinance. The recognition of domestic workers, the strengthening of child labour penalties, the recognition of platform workers, the ratification of ILO Conventions Nos. 155, 187, and 190, and the engagement with the ILO's supervisory machinery through the Labour Sector Roadmap all represent real and significant achievements.

But these achievements must be assessed against the scale and depth of the problem, and against the structural conditions that generated the problem in the first place. Millions of children continue to work in the informal economy, in domestic service, in brick kilns, and in agriculture, denied the education and development opportunities to which they are entitled. Hundreds of thousands of workers are trapped in conditions of debt bondage and forced labour. Millions of domestic workers have spent their working lives outside any legal framework, invisible to the law and vulnerable to exploitation. The 2025 reforms address these problems in their formal legal dimension, but the gap between formal law and social reality in Bangladesh is vast and will not be closed by legal text alone.

The reform agenda set out in this Part combines legal, institutional, international, and structural dimensions precisely because no single dimension is sufficient. Labour law reform without educational investment is futile. Educational investment without social protection for families at the economic margin is incomplete. Social protection without structural change in the political economy of global supply chains is insufficient. Structural change without domestic political will and institutional capacity is impossible. The path to a Bangladesh in which every child can safely attend school and every worker is genuinely free from forced labour is long, difficult, and

requires engagement with the full complexity of the problem that this Part has attempted to provide.

What this Part has attempted to demonstrate, above all, is that child labour and forced labour are not technical problems with technical solutions but political problems with political dimensions that require political engagement. The July Revolution of 2024, which brought workers and students together in a common struggle against authoritarian governance and economic injustice, created a political moment of unusual openness to transformative reform. The test of the 2025 reforms will be whether that political moment is sustained through the patient, difficult, and politically contested work of implementation, enforcement, and structural change that effective child labour and forced labour elimination requires.

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## BIBLIOGRAPHICAL NOTE AND FURTHER READING FOR PART ELEVEN

The academic literature on child labour in Bangladesh and internationally is extensive and growing. The following sources are recommended for further study, organized by theme.

On the philosophical foundations of child labour law, key works include: Martha Nussbaum, "Creating Capabilities: The Human Development Approach" (2011); Philip Alston and Mary Robinson, eds., "Human Rights and Development: Towards Mutual Reinforcement" (2005); Virginia Mantouvalou, "Are Labour Rights Human Rights?" (2012) in the European Labour Law Journal; and Iris Marion Young, "Responsibility for Justice" (2011).

On the history of child labour in South Asia and Bangladesh, important works include: Bina Agarwal, "A Field of One's Own: Gender and Land Rights in South Asia" (1994); Rajan Kuruvilla and Christopher Erickson, eds., "Industrial Relations to Human Resources and Beyond" (2002); and the Bangladesh Institute of Labour Studies' annual surveys of working conditions.

On international standards and the ILO framework, essential readings include the texts of ILO Conventions Nos. 138, 182, 29, 105, and 189, together with the CEACR's General Surveys on the abolition of forced labour (2007, 2012) and on child labour (2012). The ILO's "Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention No. 182" (2002) remains a valuable reference.

On contemporary developments in Bangladesh, the Bangladesh Labour Market Profile 2024/2025 published by the Danish Trade Union Development Agency; the Government of Bangladesh's Labour Sector Roadmap progress reports; the reports of the Labour Reform Commission (2024-2025); and the texts of the Bangladesh Labour Act (Amendment) Ordinance, 2025, are all essential primary sources.

On supply chain governance and due diligence, key recent works include: Joanna Bourke Martignoni and Nicola Piper, eds., "Migrant Labour and the Reshaping of Global Supply

Chains" (2023); the EU Corporate Sustainability Due Diligence Directive (2024); and the annual reports of the International Accord for Health and Safety in the Textile and Garment Industry.

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*End of Part Eleven*

*Part Twelve will examine Labour Administration, Inspection Systems, and the Institutional Infrastructure of Labour Law Enforcement in Bangladesh, building upon the institutional analysis begun in this Part to provide a comprehensive account of the mechanisms through which labour law is, and is not, translated from text into practice.*

## PART TWELVE: LABOUR ADMINISTRATION, INSPECTION SYSTEMS, AND THE INSTITUTIONAL INFRASTRUCTURE OF LABOUR LAW ENFORCEMENT IN BANGLADESH

### Prefatory Note on Part Twelve

The analysis developed in the eleven preceding parts of this textbook has repeatedly encountered a single, persistent, and deeply troubling phenomenon: the gap between law on paper and law in practice, between the rights formally guaranteed to workers by the Bangladesh Labour Act and the rights that workers actually enjoy in the factories, brick kilns, tea gardens, construction sites, and domestic establishments of Bangladesh. This gap is not accidental. It is not the product of mere administrative oversight or temporary institutional incapacity. It is the systematic consequence of a particular configuration of institutional arrangements, political interests, resource allocations, and ideological commitments that has produced a labour enforcement architecture structurally incapable of delivering the protections that the law, in its formal ambition, promises.

Part Twelve confronts this enforcement architecture directly. It examines the Ministry of Labour and Employment, the Department of Inspection for Factories and Establishments, the Department of Labour, the Labour Courts, the Labour Appellate Tribunal, and the constellation of other institutions, bodies, and mechanisms through which the state of Bangladesh purports to give effect to its labour law commitments. It examines these institutions not merely as bureaucratic structures but as sites of power, ideology, and political contestation, deploying the full range of jurisprudential and theoretical resources that this textbook has assembled to explain why they function as they do and what genuine reform would require.

The analysis draws upon the most recent developments in Bangladesh's institutional landscape, including the comprehensive Labour Reform Commission report of April 2025, the Labour Act Amendment Ordinance of November 2025, the digitalization initiatives undertaken through the Labour Inspection Management Application platform, and the ongoing engagement of Bangladesh with the ILO's supervisory machinery. It also draws upon the rich theoretical literature on labour administration, regulatory theory, institutional design, and administrative law that has been produced by scholars in Britain, the United States, continental Europe, and the Global South.

The central argument of Part Twelve is this: effective labour law enforcement is not merely a technical problem of administrative capacity that can be solved by hiring more inspectors, building better databases, or passing more detailed regulations. It is a political problem rooted in the structural power of employers, the organizational weakness of workers, the institutional vulnerabilities of the regulatory state, and the ideological dominance of a developmentalist conception of labour law that systematically subordinates workers' rights to the imperatives of export competitiveness and economic growth. Understanding this political dimension is essential to any serious engagement with the reform of Bangladesh's labour administration, and it is the dimension that is most frequently obscured in the technical assistance discourse of international development partners.

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## CHAPTER ONE: THE THEORY OF LABOUR ADMINISTRATION: PHILOSOPHICAL, JURISPRUDENTIAL, AND COMPARATIVE FOUNDATIONS

### 1.1 Labour Administration as a Jurisprudential Category

The concept of labour administration occupies an interesting and somewhat neglected position in the theoretical literature of labour law. Most theoretical attention has focused on the substantive content of labour rights, the legitimacy of the employment contract, the nature and limits of collective bargaining, and the philosophical justification for regulatory intervention in the labour market. Much less attention has been paid to the institutional machinery through which legal rights are given practical effect, the administrative apparatus of inspection, enforcement, adjudication, and dispute resolution that stands between the formal text of labour legislation and the lived reality of workers' conditions. Yet this machinery is, in a very real sense, more important than the formal text, because it is through the machinery, not the text, that workers either do or do not enjoy the protections that the law nominally provides.

This relative theoretical neglect of labour administration reflects, in part, the disciplinary boundaries that have traditionally separated public law from labour law, and administrative law from both. Scholars of administrative law have historically focused on the principles governing the exercise of public power, procedural fairness, judicial review, and the relationships between citizens and the state, without paying much attention to the particular domain of labour regulation. Scholars of labour law have historically focused on the substantive rules governing the employment relationship without paying systematic attention to the administrative law dimensions of enforcement. Only in recent decades has a more integrated approach emerged, recognizing that effective labour rights require not only good substantive law but also institutions capable of enforcing it, and that the design of those institutions raises fundamental questions of constitutional law, democratic theory, and political philosophy.

The ILO's Labour Administration Convention, 1978 (Convention No. 150), provides the most authoritative international framework for thinking about labour administration. Convention No. 150 defines labour administration as "all public administration activities in the field of national labour policy," and it requires ratifying states to ensure that a system of labour administration exists with specific responsibilities for the preparation, implementation, coordination, checking

and review of national labour policy. Bangladesh has ratified Convention No. 150, and its obligations under this convention provide a normative framework against which the adequacy of the existing system of labour administration can be assessed. The ILO's Labour Inspection Convention, 1947 (Convention No. 81), similarly establishes detailed requirements for a system of labour inspection, addressing the organization, staffing, training, and authority of inspectorates, and requiring that inspection reports be published annually and transmitted to the ILO. Bangladesh has ratified Convention No. 81, and its implementation has been a recurring subject of review by the ILO's Committee of Experts on the Application of Conventions and Recommendations.

The theoretical framework for thinking about labour administration must begin with the question of why administrative enforcement mechanisms are necessary at all, a question that has both jurisprudential and political economic dimensions. From the perspective of legal positivism, the answer is straightforward: laws must be enforced to be effective, and without enforcement mechanisms, legal rules are merely hortatory statements without binding force. But this answer, while correct as far as it goes, does not explain why legal rules are so frequently violated in the domain of labour law, or why enforcement mechanisms are so frequently inadequate.

A more illuminating answer is provided by the political economy of labour law enforcement. Workers, particularly in the informal economy and in sectors characterized by high labour surplus and weak worker organization, face severe informational and power asymmetries in relation to their employers. They may not know their legal rights, they may not have access to the legal resources needed to enforce them, they may fear retaliation from employers if they complain, and they may face collective action problems that prevent them from organizing to assert their rights collectively. In this context, administrative enforcement by public inspectors provides a mechanism for protecting rights that workers cannot effectively protect for themselves, and the adequacy of that mechanism depends on the resources, authority, independence, and integrity of the inspectors who staff it.

From a public choice theoretical perspective, this is where the analysis becomes complicated. Public inspectors are not neutral enforcers of the law: they are public officials embedded in particular institutional contexts, subject to particular incentive structures, and vulnerable to particular forms of political pressure and capture. The employers whose workplaces they inspect have strong incentives to influence the behavior of inspectors, through legal lobbying, through personal relationship-building, through corruption, or through political pressure on the officials who supervise the inspectors. Workers, individually, have weak incentives and limited capacity to organize political pressure for effective enforcement. The result, in the absence of strong countervailing institutional design, is a systematic bias toward under-enforcement and toward accommodation of the interests of employers over workers.

This public choice analysis is not merely theoretical: it describes a documented pattern that has been observed in labour inspection systems across the developing world, and it has been specifically identified by researchers, ILO assessors, and civil society organizations as characteristic of Bangladesh's labour inspection system. Understanding why this pattern persists, and what institutional design choices might overcome it, requires engagement with the comparative literature on regulatory theory and administrative design.

## 1.2 Regulatory Theory and Labour Administration: From Command-and-Control to Responsive Regulation

The classical model of labour law enforcement is what regulatory theorists call "command-and-control" regulation: the state sets standards through legislation, inspectors visit workplaces to check compliance with those standards, and those found in violation are subject to penalties. This model has an appealing simplicity and a clear normative foundation: the state, as the representative of the public interest, sets minimum standards of decent treatment, and it enforces those standards against those who would evade them. But the command-and-control model has faced sustained theoretical criticism and empirical challenge, and the search for more effective models of regulatory enforcement has generated a rich and sophisticated literature.

The most influential contribution to this literature is Ian Ayres and John Braithwaite's theory of "responsive regulation," developed in their 1992 book of that name. Ayres and Braithwaite argue that the central problem of command-and-control regulation is that it does not match the enforcement strategy to the motivational characteristics of the regulated entity. Most regulated entities, they argue, are neither unconditionally compliant nor unconditionally non-compliant: they respond to regulatory incentives in complex ways that depend on their internal culture, the economic costs of compliance, the probability of detection, the severity of sanctions, and the signals they receive about what regulators actually expect. A regulatory strategy that relies exclusively on deterrence will be counterproductive against entities that are motivated by civic virtue or commercial self-interest in maintaining a good reputation, because it will undermine the cooperative relationship that would otherwise support voluntary compliance. A regulatory strategy that relies exclusively on persuasion will be ineffective against entities that are motivated purely by self-interest, because it provides no effective deterrence against deliberate violations.

Responsive regulation addresses this problem by proposing a "regulatory pyramid" in which the regulatory strategy escalates from persuasion and dialogue at the base to increasingly serious sanctions at the apex, with the particular strategy deployed at any given time determined by the regulatory agency's assessment of the regulated entity's motivational disposition. At the base of the pyramid are educational and persuasive strategies: the inspector explains the relevant standard, identifies the problem, and gives the employer the opportunity to correct it voluntarily. If voluntary correction is not forthcoming, the escalation moves to warning notices, then to formal compliance orders, then to fines, then to prosecution, and at the apex, for the most serious and persistent violators, to license revocation or closure. The key insight is that most enforcement interactions can and should be resolved at the base of the pyramid, through cooperative compliance, but that the existence of credible sanctions at the apex is essential for making the cooperative approach effective.

Responsive regulation has been enormously influential in regulatory theory, and it has shaped the design of many regulatory systems, including some labour inspection systems. But it has also faced important critiques, particularly from scholars who have argued that the theory is insufficiently attentive to power asymmetries and that it risks systematically under-enforcing standards against powerful regulated entities. David Weil's work on "fissured workplaces" in the United States shows how the restructuring of employment relationships through contracting,

franchising, and supply chain disaggregation has created systematic enforcement challenges that responsive regulation, developed in a context of direct employment relationships, is ill-equipped to address. For Bangladesh, where the fissuring of the employment relationship through subcontracting, home-based work, and informal employment is pervasive, Weil's analysis has direct and powerful relevance.

Cynthia Estlund's work on "self-regulation" and "co-regulation" in the context of American labour law is also relevant to the Bangladeshi context. Estlund argues that the crisis of traditional labour law enforcement in the United States, characterized by chronic underfunding of enforcement agencies and the erosion of trade union power, has created conditions in which alternative models of governance, including private self-regulation by corporations and hybrid public-private regulatory arrangements, have become increasingly important. In Bangladesh, the emergence of international social auditing programmes, the Accord on Fire and Building Safety, and the International Accord for Health and Safety in the Textile and Garment Industry represents exactly this kind of hybrid regulatory arrangement, and evaluating its strengths and limitations requires the kind of theoretical framework that Estlund and others have developed.

The "meta-regulation" approach associated with Bronwen Morgan, Scott Burris, and others provides a third theoretical framework. Meta-regulation refers to regulatory strategies in which the state, rather than directly regulating the behavior of private actors, regulates the regulatory systems that private actors have put in place for themselves. The state sets standards for what constitutes an adequate system of self-regulation, monitors whether companies have implemented such systems, and imposes sanctions when they have not. This approach has the advantage of mobilizing the knowledge and resources of private actors in the service of regulatory goals, while maintaining the state's ultimate authority to enforce standards. In the context of Bangladesh's ready-made garments sector, the government's engagement with private social compliance programmes can be understood as a form of meta-regulation, though one that raises significant questions about democratic accountability and the appropriate role of the state in determining the content of labour standards.

The most recent theoretical development in this area is what scholars have called "networked governance" or "polycentric regulation": the idea that effective regulatory systems are not hierarchically organized with the state at the apex but are distributed across networks of public, private, and civil society actors, each contributing different resources and capacities to the common goal of effective enforcement. This framework has been applied to global supply chain governance by scholars such as Fabrizio Cafaggi, Nolan, and Hessler, and it provides a useful lens for understanding the complex web of regulatory actors, including the Bangladeshi state, international buyers, ILO programmes, civil society organizations, and private certification bodies, that collectively constitute the governance architecture for labour standards in Bangladesh's export industries.

### 1.3 The Political Philosophy of Labour Administration: Weber, Habermas, and the Rational-Legal State

The classical sociological theory of Max Weber provides an indispensable starting point for thinking about the institutional design of labour administration. Weber's analysis of bureaucracy

as the specifically modern form of rational-legal domination, characterized by fixed jurisdictional competencies, hierarchical organization, written documentation, formal training of officials, and the separation of the official from the means of administration, provides the ideal type against which the actual structure of Bangladesh's labour administration can be assessed. Weberian bureaucracy, for all its notorious limitations, represents an institutional form in which power is exercised according to rules rather than personal discretion, in which officials are accountable to written procedures rather than to personal patrons, and in which the formal rationality of legal rules provides at least some protection against the arbitrary exercise of authority.

Bangladesh's labour administration departs from the Weberian ideal in multiple and significant ways. Officials exercise substantial personal discretion, enforcement decisions are frequently influenced by personal relationships, patronage networks, and corrupt incentives, and formal rules are often either unknown to the officials who are supposed to apply them or are systematically circumvented in practice. This departure from Weberian rationality is not merely a technical administrative problem: it is a reflection of the particular character of the Bangladeshi state, which Mushtaq Khan and others have analyzed as a "limited access order" in which elite bargains, patronage networks, and the strategic use of state institutions for private benefit are pervasive features of political organization.

Jurgen Habermas's theory of communicative rationality provides a different and complementary lens. Habermas distinguishes between strategic action, oriented toward the achievement of the actor's own ends through the instrumental use of others, and communicative action, oriented toward the achievement of mutual understanding through rational discourse. He argues that legitimate political and administrative authority must be grounded in communicative rationality, in processes of deliberation and decision-making that are open to the participation of all affected parties and that aspire to reach decisions through the force of the better argument rather than through power, money, or strategic manipulation. Applied to labour administration, Habermas's framework suggests that the tripartite model of labour governance, in which workers, employers, and the state participate together in the design and implementation of labour standards, is not merely a pragmatic arrangement for managing competing interests but an institutional expression of the communicative rationality that legitimate governance requires.

This Habermasian analysis of tripartism has been developed in the context of labour law by scholars such as Hugh Collins, who has argued that the traditional command-and-control model of labour law, in which the state unilaterally determines and enforces labour standards, is both less legitimate and less effective than deliberative models in which workers, employers, and other stakeholders participate in the construction of the regulatory framework. Collins's "reflexive law" theory, drawing upon the systems theory of Niklas Luhmann as well as Habermas, argues that effective legal regulation of complex social systems requires that the law stimulate the self-regulatory capacities of those systems rather than attempting to determine their operation from without. Applied to Bangladesh, this framework suggests that the most effective long-term strategy for improving labour standards is not primarily to strengthen state enforcement capacity, important as that is, but to build the organizational capacity of workers and the deliberative institutions of tripartism that enable workers to participate effectively in the governance of their own working conditions.

The republican theory of non-domination, associated in its contemporary form with Philip Pettit and developed in the labour law context by Alan Bogg and others, provides a third philosophical framework. Republicans argue that the fundamental wrong of arbitrary power, whether wielded by an employer over an individual worker or by a state bureaucracy over its citizens, consists in the vulnerability of the dominated party to interference at the will of the dominant party. What institutions must do, from a republican perspective, is not merely provide rights and remedies after the fact of domination but create conditions of non-domination in which workers are genuinely secure against arbitrary interference with their working lives. This requires not only formal legal rights but institutional arrangements that give those rights teeth: effective inspection, accessible dispute resolution, strong trade unions, and administrative processes that workers can navigate without undue cost or risk.

The republican framework is particularly illuminating in the Bangladeshi context because it directs attention to the structural conditions of domination that formal legal reforms often leave untouched. A worker who has the formal right to complain to DIFE about a violation of their rights but faces the practical risk of dismissal if they do so, who lives far from any DIFE office and cannot afford the transport costs of a complaint, who cannot read the formal complaint forms required by the regulations, who fears that the inspector who receives the complaint may have a corrupt relationship with the employer, is a worker who is dominated, despite the formal existence of legal rights, because she is vulnerable to interference at the will of her employer. Republican labour law reform must address these conditions of domination, not merely amend the formal text of legislation.

### 1.4 The ILO Framework for Labour Administration: Convention No. 150 and Convention No. 81

The international framework for labour administration is established primarily by two ILO Conventions: Convention No. 150 on Labour Administration, adopted in 1978, and Convention No. 81 on Labour Inspection, adopted in 1947. Together with their accompanying Recommendations, these instruments establish the normative framework against which Bangladesh's labour administration system must be assessed.

Convention No. 150 requires that each ratifying state ensure the existence of a system of labour administration with specific functions: the preparation, implementation, coordination, checking, and review of national labour policy. The system must cover all categories of workers, including agricultural workers and those in the informal economy. It must coordinate with other public authorities whose activities affect the labour field. It must engage in social dialogue with employers' and workers' organizations. And it must ensure that labour administration personnel have the status, means, and independence needed to perform their functions effectively. Bangladesh ratified Convention No. 150, and its obligations under this convention provide the normative framework for assessing the adequacy of the Ministry of Labour and Employment and the broader system of labour governance.

Convention No. 81 establishes more specific requirements for the labour inspection system. Ratifying states must maintain a system of labour inspection in industrial workplaces with specific functions: securing the enforcement of legal provisions relating to conditions of work

and the protection of workers, supplying technical information and advice to employers and workers, and bringing deficiencies or abuses not specifically covered by existing legal provisions to the notice of the competent authority. The inspectorate must be under the supervision of a central authority, inspection districts must be appropriately staffed, inspectors must be public officials whose status and conditions of service ensure independence from changes of government and from improper external influence, inspectors must be adequately qualified and trained, and the inspection system must publish an annual report on its activities. These detailed requirements provide a template against which the performance of DIFE can be assessed, and the ILO's Committee of Experts has repeatedly used this template to identify specific deficiencies in Bangladesh's inspection system.

The ILO's Private Employment Agencies Convention, 1997 (Convention No. 181), is also relevant to Bangladesh's labour administration, given the significant role that private employment agencies play in the placement of migrant workers. Convention No. 181 requires states to establish a system for the licensing and supervision of private employment agencies, and to provide adequate protection for the workers they recruit and place. Bangladesh's regulation of private employment agencies has been chronically inadequate, and the abuses associated with the recruitment of migrant workers through licensed and unlicensed agencies have been a persistent source of concern for both domestic and international observers.

The 2025 Labour Administration and Inspection Convention, while not formally adopted by the ILO in that precise form, reflects the ongoing evolution of ILO thinking about labour administration in the context of the "future of work" agenda. The ILO's 2019 Centenary Declaration on the Future of Work, adopted unanimously by member states, commits the organization and its members to a "human-centred" approach to the governance of work, centred on the enhancement of workers' capabilities and the promotion of decent work as a public good. This agenda provides the broader normative context within which specific debates about labour inspection and administration in Bangladesh must be situated.

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## CHAPTER TWO: THE MINISTRY OF LABOUR AND EMPLOYMENT: STRUCTURE, FUNCTIONS, AND POLITICAL ECONOMY

### 2.1 Constitutional and Statutory Foundations

The Ministry of Labour and Employment (MoLE) is the apex institution of Bangladesh's labour administration system. Its constitutional foundation lies in the executive power of the People's Republic of Bangladesh, established by Article 55 of the Constitution, which vests executive authority in the Prime Minister and the Cabinet. The Rules of Business allocated to the Ministry of Labour and Employment cover a wide range of functions, including the formulation of labour policy, the administration of labour legislation, the management of labour disputes, the oversight of workers' welfare, and the maintenance of Bangladesh's international labour obligations.

The MoLE's core statutory basis lies in the Bangladesh Labour Act, 2006 (BLA), which designates the Ministry as the "appropriate government" for the purposes of most provisions of

the Act. The Ministry is empowered to make rules under the BLA, to establish and regulate the various bodies created by the Act, to grant exemptions from its provisions, and to exercise a range of supervisory and appellate functions. The Bangladesh Labour Rules, 2015, made under the authority of the BLA, elaborate the procedural framework for the exercise of most of these functions.

The Ministry is headed by a minister, who is a member of the Cabinet and is accountable to Parliament for the Ministry's performance. Under the minister is the senior civil service, headed by a Secretary who is the principal administrative officer of the Ministry and is accountable to the minister and to the Cabinet for the day-to-day management of the Ministry's affairs. The Ministry's organizational structure includes several key departments and attached offices: the Department of Inspection for Factories and Establishments (DIFE), the Department of Labour (DoL), the National Institute for Occupational Safety and Health Training and Research (NOSHTRI), and various subsidiary bodies including the Labour Courts, the Labour Appellate Tribunal, and the Minimum Wage Boards.

### 2.2 Political Economy of the Ministry: Structural Vulnerabilities and Systemic Pressures

The Ministry of Labour and Employment occupies a peculiar and structurally difficult position in Bangladesh's governmental architecture. On one side, it is responsible for protecting the rights and welfare of workers, a constituency that, while numerically enormous, is organizationally fragmented, politically underrepresented, and economically vulnerable. On the other side, it operates in the shadow of more politically powerful ministries, including the Ministry of Commerce, the Ministry of Finance, and the Ministry of Industries, which have historically prioritized export competitiveness and investment promotion over workers' rights. This structural imbalance in political power has shaped the Ministry's institutional culture, its policy orientation, and its enforcement priorities in ways that systematically disadvantage workers.

The garment industry's extraordinary political influence is central to understanding the Ministry's structural position. Bangladesh's ready-made garments sector accounts for approximately eighty-five percent of the country's export earnings, and the factory owners who dominate this sector have long been among the most politically connected business groups in Bangladesh, with significant representation in parliament, close relationships with successive governments, and the organizational capacity to mobilize against regulatory initiatives that they perceive as threatening their economic interests. The Ministry of Labour has, throughout much of its history, operated in an environment in which the political cost of enforcing labour standards too aggressively was higher than the political cost of tolerating violations, because the employers had the political connections to impose costs on the government while the workers did not.

This structural imbalance was partially disrupted by the Rana Plaza disaster of April 2013, which killed 1,134 workers and injured approximately 2,000 others, and which created an international crisis that imposed external political costs on the government's tolerance of unsafe working conditions. The disaster led to the development of the Sustainability Compact between Bangladesh, the European Union, the United States, and the ILO, which created an international monitoring framework for Bangladesh's labour reform commitments and introduced a new dimension of external accountability into the political economy of the Ministry's operations.

The July Revolution of 2024, which brought the Awami League government of Sheikh Hasina to an end and installed an interim government led by Chief Adviser Professor Muhammad Yunus, created a further disruption of the established political equilibrium. The formation of the Labour Reform Commission in November 2024, the commission's comprehensive report of April 2025, and the Bangladesh Labour Act Amendment Ordinance of November 2025 all reflect a political moment of unusual openness to structural reform, driven by the conjunction of popular mobilization, international pressure, and a government that, lacking the political debts of a conventional elected administration, was somewhat more insulated from the immediate political costs of reform.

The November 2025 Amendment Ordinance represented, as earlier parts of this textbook have noted, a significant legislative achievement, addressing 125 sections of the original Act and incorporating recommendations from the Labour Reform Commission, the ILO Committee of Experts, and the tripartite consultative process. The amendments affecting labour administration are particularly notable: they strengthen the institutional autonomy of DIFE, enhance the enforcement powers of labour inspectors, introduce digital reporting requirements for employers, and expand the jurisdiction of labour courts. These reforms are examined in detail in the sections that follow.

### 2.3 The National Tripartite Consultative Council and Social Dialogue Mechanisms

One of the most important institutional mechanisms for labour policy-making in Bangladesh is the National Tripartite Consultative Council (NTCC), established under Section 308 of the BLA. The NTCC is constituted with representatives of the government, workers' organizations, and employers' organizations, and is charged with formulating recommendations on matters related to labour policy, labour legislation, and industrial relations. The NTCC is chaired by the Minister of Labour and Employment, and its secretariat is provided by the Ministry.

The tripartite principle embodied in the NTCC is one of the foundational principles of the ILO's conception of labour governance. It reflects the insight, which Habermas's theory of communicative rationality helps to articulate, that legitimate labour standards must be the product of genuine deliberation among those affected by them, not merely the unilateral imposition of the state or the result of market bargaining between unequal parties. The ILO's Tripartite Consultation (International Labour Standards) Convention, 1976 (Convention No. 144), which Bangladesh has ratified, requires states to establish procedures for effective tripartite consultation on all matters related to the activities of the ILO, including the submission of international labour standards to the competent authority, the examination of unratified conventions, and the reporting obligations of ratifying states.

In practice, the NTCC has faced significant challenges that have limited its effectiveness as a genuine mechanism of social dialogue. The representation of workers on the NTCC has been contested, given the fragmented character of Bangladesh's trade union movement and the historical exclusion of the most representative worker organizations from formal consultative processes. The transparency of the NTCC's proceedings has been limited. And the NTCC's recommendations have not always been implemented by the government, which has sometimes proceeded with legislative or policy changes without adequate tripartite consultation.

The 2025 Amendment Ordinance was, according to government sources, developed through a tripartite process involving a seventeen-member tripartite committee of workers, employers, and government representatives. Kalpona Akter, a prominent labour rights activist and member of the Labour Reform Commission, characterized this tripartite process as representing a significant improvement over previous practice. At the same time, the Bangladesh Employers' Federation and certain employer associations expressed concern that some provisions of the final ordinance deviated from what had been agreed in the tripartite process, suggesting that the consultative character of the process was incomplete. This tension between the formal commitment to tripartism and the practical realities of political bargaining is a recurring feature of Bangladesh's labour governance, and it reflects the fundamental challenges of building genuinely participatory regulatory institutions in a context of extreme power asymmetries.

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## CHAPTER THREE: THE DEPARTMENT OF INSPECTION FOR FACTORIES AND ESTABLISHMENTS: ARCHITECTURE, CAPACITY, AND CHRONIC DEFICIENCIES

### 3.1 Historical Development of DIFE: From the Factory Inspectorate to the Modern Department

The institutional ancestor of the present Department of Inspection for Factories and Establishments is the factory inspectorate established under the British Indian Factories Acts of the late nineteenth and early twentieth centuries. The first Chief Inspector of Factories for Bengal was appointed in the 1880s under the authority of the Indian Factories Act, 1881, and subsequent legislation, including the Factories Act, 1934, elaborated a system of factory inspection that was inherited by Pakistan at independence and by Bangladesh after liberation.

The evolution of DIFE from a colonial factory inspectorate to its present form has been a complex and contested process, shaped by industrial disasters, international pressure, domestic political dynamics, and the chronic underfunding of the state's administrative capacity. The most significant recent transformation was the upgrading of the Department from a Directorate to a Department on January 15, 2014, following the Rana Plaza disaster of 2013, which provided greater operational and management authority and signalled a formal commitment to strengthening the labour inspection system.

Before the Rana Plaza disaster, DIFE operated as a deeply underfunded and organizationally fragile institution with a small number of inspectors responsible for monitoring a vast and growing industrial workforce. The 2013 disaster exposed the catastrophic consequences of this underfunding in the most stark and tragic terms: a building that had been flagged as structurally unsafe was allowed to continue operation, killing over a thousand workers. The international response, including the Sustainability Compact, the Accord on Fire and Building Safety, and the Alliance for Bangladesh Worker Safety, created a new political imperative for institutional strengthening, and a programme of DIFE reform was initiated with substantial ILO technical and financial support.

The reform programme introduced between 2014 and 2025 included: the expansion of DIFE's organizational structure through the creation of new inspector posts and field offices; the development of the Labour Inspection Management Application (LIMA) as a digital platform for inspection management; the adoption of sector-specific National Labour Inspection Plans; the development of Standard Operating Procedures for inspection; the creation of specialized inspection checklists for different sectors; the establishment of an Industrial Safety Unit; the introduction of a helpline (16357) for worker complaints; and the training of inspectors in occupational safety and health through NOSHTRI. These reforms have been documented in the successive iterations of Bangladesh's National Action Plan on the Labour Sector, submitted to the ILO Governing Body.

### 3.2 Current Organizational Structure and Capacity

As of the most recent reporting period, DIFE's sanctioned manpower has increased to 1,129 positions, including 724 inspector positions. The department operates field offices across Bangladesh's divisions and districts, and has established eight specialized occupational safety and health teams covering areas including machinery safety, accident prevention, chemical safety, ergonomics, boiler and pressure vessel safety, construction safety, and cranes and lifting equipment. A dedicated Industrial Safety Unit has been established within DIFE to address the most serious building and structural safety concerns in the industrial sector.

The digital infrastructure of DIFE has been significantly enhanced through the LIMA platform. LIMA serves as a comprehensive management information system for labour inspection, enabling the online submission and processing of: layout plan approvals, factory license applications and renewals, occupational health and safety reporting, worker grievance management, and inspection data collection and analysis. The system is intended to enhance transparency and accountability in the inspection process by creating a digital audit trail for all inspection-related activities and by making inspection data available for analysis and monitoring.

The practical performance of the inspection system has shown significant improvement in quantitative terms. Between July 2024 and June 2025, a total of 43,265 inspections were conducted across DIFE's jurisdiction, 8,697 new licenses were issued, and 30,783 licenses were renewed. Additionally, 2,445 layout plans were approved through the LIMA system during this period. The helpline (16357) received 5,214 complaints between July 2024 and June 2025, and 1,431 complaints between July and September 2025. The department also conducted 28,995 inspections in accordance with its annual sector-specific Labour Inspection Plan during the 2024-2025 fiscal year.

These numbers represent a significant increase from earlier periods and reflect genuine institutional strengthening. However, the translation of quantitative improvement into qualitative improvement in workers' actual conditions is far from automatic, and a critical assessment of the inspection system's effectiveness must look beyond the raw numbers to the quality, coverage, and follow-up of inspections.

### 3.3 The Inspector-to-Worker Ratio Problem: A Structural Analysis

The most fundamental structural deficiency of Bangladesh's labour inspection system is the chronic imbalance between the number of inspectors and the number of workplaces and workers they are required to monitor. This imbalance is not merely a temporary shortfall that can be addressed by hiring more inspectors: it reflects deep-seated political choices about the allocation of public resources and the priority given to labour enforcement within the overall structure of government spending.

The ILO's guidance on inspector-to-worker ratios suggests that, as a general benchmark, there should be at least one inspector for every ten thousand workers in highly industrialized countries, one for every fifteen thousand workers in transitional economies, and one for every thirty thousand workers in less developed countries. Bangladesh's workforce of over sixty million people, with a significant proportion employed in establishments covered by the BLA, would require several thousand inspectors to approach even the most relaxed of these benchmarks. The 724 inspector posts that DIFE has filled represent a ratio that falls far short of any credible international benchmark.

Moreover, the distribution of inspection effort across sectors is highly uneven. The ready-made garments sector, which has attracted international attention following the Rana Plaza disaster and benefits from the monitoring activities of the International Accord, receives a disproportionate share of DIFE's inspection attention. The vast and growing informal economy, including domestic workers, agricultural workers, home-based workers, and the millions of workers in small and medium enterprises not covered by any formal inspection programme, receives virtually no effective inspection coverage.

The November 2025 Amendment Ordinance addresses the inspector capacity problem in part through provisions designed to free inspector time from administrative tasks. The extension of factory license renewal from one year to five years, which was part of the draft amendment and was approved by the advisory council, is intended to reduce the administrative burden on inspectors who, under the old one-year renewal regime, were spending enormous amounts of time processing routine license renewals rather than conducting substantive compliance inspections. This reform attracted mixed reactions: factory owners and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) welcomed it as a reduction in bureaucratic burden and compliance costs, while a section of DIFE inspectors reportedly opposed it, on the official ground that annual renewals maintain compliance pressure and on the less official ground that frequent renewals provided opportunities for the corrupt extraction of "illegal benefits" from factory owners.

This controversy over license renewal periods is instructive in multiple dimensions. It illustrates the gap between the formal rationale of regulatory provisions and their practical operation in a context where enforcement is colonized by corrupt incentives. It illustrates the conflict of interest between inspectors as institutional actors and inspectors as individual actors with personal economic interests. And it illustrates the way in which reform initiatives, even when formally correct, must navigate a complex political economy of institutional resistance.

### 3.4 The LIMA Digital Platform: Promises and Limitations

The Labour Inspection Management Application represents the most ambitious attempt to date to modernize and systematize Bangladesh's labour inspection system. The platform was developed with ILO technical support and is intended to serve as the backbone of a digitally integrated inspection management system, providing real-time data on inspection activities, enabling online processing of regulatory applications, and creating a transparent and auditable record of enforcement decisions.

The practical implementation of LIMA has demonstrated both the potential and the limitations of digital governance solutions in a context of significant institutional and infrastructural constraints. On the positive side, the platform has enabled the consolidation of inspection data in a way that was previously impossible, facilitating the preparation of annual labour inspection reports and supporting evidence-based inspection planning. The online processing of license applications and renewals has reduced physical interactions between employers and inspectors, thereby reducing, in principle, the opportunities for corrupt transactions. The digital recording of inspection findings has created an audit trail that increases accountability, at least in principle.

On the negative side, the effective use of LIMA requires that inspectors have reliable internet connectivity, adequate devices, and sufficient digital literacy to operate the system. All of these prerequisites are unevenly distributed across DIFE's field offices, with better resourced urban offices having a significant advantage over rural and district-level offices. There are also concerns about the reliability of the data entered into the system, since the system's outputs are only as accurate as the inputs provided by individual inspectors, and there is no systematic mechanism for verifying the accuracy of inspection records created by individual inspectors in the field.

A deeper theoretical concern is that digital systems of inspection management may optimize for measurable outputs, the number of inspections conducted, licenses issued, and forms processed, at the expense of substantive outcomes, whether workers are actually safer, healthier, and better paid as a result of inspection activities. This tendency to substitute process compliance for substantive compliance is what Braithwaite, in a different context, has called the "displacement of goals," and it is a pervasive risk in any system of performance management that relies on quantitative indicators.

The Labour Reform Commission's report of April 2025 recognized these limitations and recommended that DIFE move toward a risk-based inspection system in which inspection resources are allocated on the basis of a systematic assessment of risk, taking into account sector-specific hazard profiles, enterprise size, compliance history, and the vulnerability of the workforce employed. This recommendation aligns with the ILO's guidance on evidence-based labour inspection planning and represents a significant methodological advance over the current approach, which, as the ILO's 2020 assessment noted, is "based on the economic importance of sectors, prominence of the issues, availability of resources and convenience to inspect" rather than on systematic risk assessment.

### 3.5 Corruption in the Labour Inspection System: Evidence, Analysis, and Reform

The problem of corruption in Bangladesh's labour inspection system is simultaneously one of the most important and most politically sensitive dimensions of any serious analysis of DIFE's performance. Corruption in this context refers not only to the illegal payment of bribes but to the broader range of practices through which individual inspectors and the institution as a whole systematically fail to enforce the law against employers, for reasons related to personal economic interest, political pressure, personal relationships, or institutional culture.

The evidence for corruption in DIFE is extensive, though its precise magnitude is difficult to quantify. Reports from workers' organizations, civil society observers, and investigative journalists consistently document practices including: the acceptance of payments from employers in exchange for favorable inspection reports or lenient enforcement; the notification of employers in advance of scheduled inspections, enabling them to temporarily correct visible violations before the inspector arrives; the failure to investigate complaints received from workers because of relationships between the inspector and the employer; and the issuance of compliance certifications to workplaces that do not meet the relevant standards.

The extension of the factory license renewal period from one year to five years is in part a response to the well-documented practice of corrupt benefit extraction through the annual renewal process. The Financial Express reported in November 2025 that "there are also allegations that some inspectors prefer annual renewals to continue receiving 'illegal benefits' from frequent interactions with business owners." This practice, which amounts to a form of regulatory rent-seeking, distorts the allocation of inspection resources and undermines the integrity of the regulatory system.

The theoretical analysis of corruption in bureaucratic institutions, associated most prominently with economists including Susan Rose-Ackerman and Robert Klitgaard, suggests that corruption is most likely to flourish in conditions of: high discretionary authority in the hands of individual officials; low salaries that fail to provide adequate income without supplementary earnings; weak monitoring and accountability systems; and a broader institutional culture in which corrupt practices are normalized and expected. All four of these conditions characterize Bangladesh's labour inspection system to a significant degree, and any serious anti-corruption strategy must address all four simultaneously.

Institutional reforms that reduce the discretionary authority of individual inspectors, through risk-based inspection plans, digitalized reporting requirements, and structured inspection checklists, are therefore anti-corruption measures as well as efficiency measures. Higher salaries for inspectors, achieved through improved budget allocations, would reduce the economic incentive for corrupt supplementation. Stronger accountability mechanisms, including the publication of individual inspector's inspection records and enforcement decisions, would increase the reputational cost of corrupt practices. And a sustained effort to change the institutional culture of DIFE, through training, leadership, and the exemplary prosecution of corrupt inspectors, would address the normalization of corrupt practices.

# CHAPTER FOUR: THE DEPARTMENT OF LABOUR: DISPUTE RESOLUTION, REGISTRATION, AND INDUSTRIAL RELATIONS ADMINISTRATION

## 4.1 Institutional Architecture and Statutory Functions

The Department of Labour (DoL) is the second principal operational department within the MoLE, and it performs functions that are in some respects even more fundamental to the day-to-day operation of labour law than those of DIFE. The DoL is responsible for: the registration of trade unions and employers' associations; the administration of conciliation and mediation procedures for industrial disputes; the maintenance of records of collective agreements; the supervision of participation committees in factories; and the administration of certain provisions of the Bangladesh Labour Act relating to individual and collective labour relations.

The DoL's functions under Chapters XIII and XIV of the BLA are particularly important. Chapter XIII governs trade unions and collective bargaining, and the DoL is responsible for receiving and processing applications for trade union registration, conducting investigations into complaints of anti-union discrimination and unfair labour practices, and maintaining the register of trade unions. Chapter XIV governs industrial disputes, and the DoL's conciliators and arbitrators play a central role in the statutory dispute resolution process.

The November 2025 Amendment Ordinance introduced significant changes to the trade union registration framework administered by the DoL. The most controversial provision reduced the minimum membership threshold for the formation of an enterprise-level union in the apparel sector. Under the previous regime, a trade union required a membership of thirty percent of the workers employed in the enterprise to apply for registration. The amendment introduced a threshold of twenty workers, irrespective of enterprise size, representing a dramatic reduction in the barrier to union formation. As of the most recent reported position, the government issued a gazette notification allowing trade unions in the apparel sector to be formed with a minimum of twenty workers.

The significance of this reform cannot be overstated. Bangladesh's trade union movement has been historically fragmented and politically weak, and a principal cause of this weakness is the stringent registration requirements that have made it difficult for workers in small and medium-sized enterprises to form effective unions. Only about five percent of Bangladesh's workforce is unionized, and of the approximately ten thousand unions officially on record, fewer than one hundred are operational in the garment sector, with only about forty possessing collective bargaining authority. The Awami League government had historically resisted substantial reduction in the registration threshold, reflecting the political influence of the garment industry lobby. The interim government's willingness to introduce the twenty-worker threshold represents a significant break with this history, though employer organizations have expressed concern that the new threshold is set too low and may expose enterprises to destabilizing union competition.

## 4.2 The Trade Union Registration Process: Procedural Architecture and Systemic Failures

The process of trade union registration under the BLA is governed by Section 179 and the associated Rules. An application for registration must be submitted to the Director of Labour,

accompanied by a copy of the proposed rules of the union, a statement of assets and liabilities, a list of officers, and evidence that the required minimum membership threshold has been met. The Director of Labour must, within sixty days of receiving the application, either register the union or refuse to do so, and must provide reasons for any refusal.

In practice, the registration process has been plagued by delays, arbitrary refusals, and the use of procedural technicalities to frustrate the registration of unions that are disfavored by employers or by politically connected officials. The ILO's Committee of Experts has repeatedly noted with concern the pattern of delays and refusals in the processing of union registration applications in Bangladesh, and has requested detailed information from the government about the grounds on which registration has been refused and the timelines within which applications are processed.

The Labour Reform Commission's report of April 2025 specifically identified the trade union registration process as a priority area for reform, recommending the establishment of a digital case management system for trade union registrations that would track applications through the process, create a public record of decisions, and impose automatic accountability for compliance with statutory deadlines. The November 2025 Amendment Ordinance included provisions to this effect, and their implementation represents one of the most important institutional reform priorities for the DoL.

The problem of anti-union discrimination and unfair labour practices is closely related to the registration problem. Workers who attempt to organize unions frequently face retaliation from employers, including dismissal, harassment, blacklisting, and, in extreme cases, physical violence. Section 195 of the BLA prohibits a range of unfair labour practices by employers, including interference with the formation or administration of a trade union, discrimination against union members, and refusal to bargain collectively with registered unions. But the enforcement of these provisions has been chronically inadequate, both because DIFE and the DoL lack the resources and institutional capacity to investigate ULP complaints effectively, and because the culture of impunity for employer anti-union behavior is deeply entrenched.

The November 2025 Amendment strengthened the unfair labour practice provisions and introduced new procedural mechanisms for the investigation and adjudication of ULP complaints. These include a dedicated process within the DoL for the investigation of ULP complaints, with mandatory timelines for investigation and decision, and enhanced remedies for workers who have been the victims of anti-union discrimination. The effectiveness of these provisions will depend critically on the institutional capacity and political independence of the DoL officials responsible for implementing them.

### 4.3 Conciliation, Mediation, and Arbitration: The Statutory Dispute Resolution Framework

The statutory framework for the resolution of industrial disputes in Bangladesh is set out in Chapter XIV of the BLA. The framework operates through a series of sequential stages: bipartite negotiation between the parties at the enterprise level, followed by conciliation by a government conciliator, followed by arbitration if conciliation fails, and followed by the reference of certain categories of disputes to Labour Courts. The system is designed to resolve disputes at the earliest

possible stage, minimize recourse to strikes and lockouts, and provide a speedy and inexpensive mechanism for the settlement of labour disputes.

In practice, the conciliation and arbitration system has performed poorly. Conciliators appointed by the DoL are frequently insufficiently trained, lack the impartiality and authority needed to resolve disputes effectively, and are subject to political pressures that compromise their independence. Arbitration awards have sometimes been inconsistent and poorly reasoned, contributing to uncertainty about the law and encouraging parties to bypass the arbitration stage in favor of court litigation. The result is that a significant proportion of industrial disputes that should be resolved through the administrative system end up being litigated in the Labour Courts, contributing to the severe backlogs that afflict those courts.

The Labour Reform Commission's report recommended a series of measures to strengthen the conciliation and arbitration system, including: dedicated conciliators within the DoL with specialist training in dispute resolution and labour law; mandatory mediation before court filings; fast-track procedures for individual disputes involving monetary claims; and the development of factory-level mediation boards for the resolution of grievances before they escalate to the statutory level. The November 2025 Amendment incorporated provisions for amending the BLA to permit arbitration for individual disputes, which had not previously been provided for in the statutory framework, and for the appointment of dedicated conciliators within the DoL.

The ILO's Advancing Decent Work Project has supported the strengthening of the conciliation and arbitration system through technical assistance, training, and the development of model procedures. A tripartite consultation organized under this project in May 2024 identified the key challenges facing the conciliation and arbitration system and reached broad consensus that strengthening these mechanisms would support a more stable industrial environment. The challenge now is to translate this consensus into practical institutional change.

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## CHAPTER FIVE: THE LABOUR COURTS AND LABOUR APPELLATE TRIBUNAL: JUDICIAL ARCHITECTURE AND THE CRISIS OF ACCESS TO JUSTICE

### 5.1 The Statutory Framework: Constitution, Jurisdiction, and Procedure

The Labour Courts established under Chapter XIV of the BLA are the principal judicial institutions for the resolution of labour disputes in Bangladesh. Section 214 of the BLA empowers the government to establish Labour Courts in various localities, and Section 215 confers upon Labour Courts jurisdiction over: complaints of unfair labour practices; applications for the enforcement of settlement agreements; individual claims for wages, compensation, and other monetary benefits; disputes referred by conciliators following the breakdown of conciliation; and any other matter over which jurisdiction is conferred by the BLA or other legislation. The Labour Appellate Tribunal, established under Section 220, exercises appellate jurisdiction over decisions of the Labour Courts.

As of mid-2025, Bangladesh had thirteen Labour Courts located across the country, with the majority concentrated in Dhaka. This number is clearly inadequate for a country with a workforce of over sixty million people and a labour law framework that generates a steady stream of disputes. The concentration of Labour Courts in Dhaka is particularly problematic for workers in other industrial centres, including Chittagong, Gazipur, and Narayanganj, who face significant costs and logistical difficulties in accessing the courts.

The procedural rules governing Labour Court proceedings are set out in the Bangladesh Labour Rules, 2015, and in the Courts' own procedural orders. The procedure is intended to be accessible to workers without legal representation, but in practice the technical complexity of Labour Court proceedings and the sophistication of the procedural rules tend systematically to favor employers, who are better resourced and have easier access to legal representation. The absence of effective legal aid for workers appearing in Labour Courts is a pervasive and well-documented problem that fundamentally compromises the fairness and accessibility of the system.

### 5.2 The Backlog Crisis: Scale, Causes, and Consequences

The most acute practical problem confronting Bangladesh's Labour Courts is the chronic backlog of unresolved cases. As of April 2025, according to reporting by The Business Standard, more than 20,000 labour-related cases were pending across the country's thirteen Labour Courts and the Labour Appellate Tribunal. Of these, 13,402 cases had been pending for more than six months, despite the legal requirement under the BLA that Labour Court proceedings be concluded within sixty to one hundred and fifty days. This backlog represents a fundamental denial of justice for the workers whose claims are delayed: a worker waiting years for a court decision on a claim for wages due or compensation for wrongful dismissal is, in practice, a worker whose right to justice is being systematically denied.

The causes of the Labour Court backlog are multiple and interrelated. The number of courts is insufficient relative to the volume of disputes. The number of judges is also insufficient, and individual judges are assigned caseloads that make it impossible to dispose of cases within the statutory timeframes, however efficiently they work. The procedural framework for Labour Court proceedings, despite its formal simplicity, generates frequent adjournments, interlocutory applications, and procedural disputes that extend the duration of cases. The service of process is frequently delayed or ineffective, because addresses for defendants are often incorrect or because defendants deliberately evade service to delay proceedings. And the appeals process before the Labour Appellate Tribunal, while in principle designed to provide a speedy appellate remedy, has its own backlog of cases that extends the total time to final resolution.

The structural dimension of the backlog problem is particularly important. The backlog is not merely a product of administrative failures that could be corrected by managerial improvements: it reflects deep-seated under-investment in the judicial infrastructure of labour law that is itself a reflection of the low political priority given to labour justice. Expanding the number of Labour Courts and Labour Court judges requires budget allocations and political commitment of a kind that has historically been difficult to secure in Bangladesh's fiscal and political environment.

The Labour Reform Commission's report identified the Labour Court backlog as a priority reform concern and recommended: the expansion of the number of Labour Courts to at least one court per district; the recruitment of additional judges; the introduction of digital case management systems to improve the efficiency of proceedings; the establishment of fast-track procedures for straightforward monetary claims; and mandatory mediation before the filing of claims that are amenable to settlement. The November 2025 Amendment introduced several procedural reforms designed to accelerate the disposal of Labour Court cases, including streamlined procedures for uncontested claims and enhanced powers for Labour Court judges to impose sanctions on parties whose dilatory tactics cause unreasonable delay.

### 5.3 Access to Justice: Legal Aid, Cost, and Worker Vulnerability

The formal existence of Labour Courts does not, by itself, guarantee access to justice for workers. Effective access requires that workers be able to: identify the correct forum for their complaint; understand the procedural requirements for filing a case; afford the costs of litigation, including filing fees, transport to the court, and legal representation; find a lawyer who is willing and able to represent them effectively; and withstand the economic pressure of a prolonged litigation while awaiting a decision.

None of these conditions is reliably met for the typical Bangladeshi worker. The legal framework governing Labour Court proceedings is complex, and even educated workers are frequently unaware of their rights or of the procedures for enforcing them. Transport costs are significant for workers who live far from the nearest Labour Court. Legal fees are beyond the means of most workers, and while a formal system of legal aid exists under the Legal Aid Services Act, 2000, and the Legal Aid Services Trust (BLAST) provides some assistance, the demand for legal aid services far exceeds the available supply.

The problem of retaliation against workers who file Labour Court claims is also significant. Workers employed in enterprises where their employer knows they have filed a claim frequently face dismissal, harassment, or blacklisting from other employment, creating a powerful deterrent to the use of the court system. The formal prohibition on retaliatory dismissal contained in the BLA is inadequately enforced, because the enforcement of an anti-retaliation provision requires exactly the kind of institutional capacity and political will that the enforcement system as a whole lacks.

The development of alternative dispute resolution mechanisms, including factory-level grievance mechanisms, community-based mediation, and online dispute resolution platforms, is increasingly recognized as essential for supplementing the formal court system and providing workers with more accessible and less costly mechanisms for resolving their complaints. The Labour Reform Commission's report endorsed the development of such mechanisms, and several pilot projects have been implemented with ILO and civil society support. Their systematization and integration into the statutory framework represents an important medium-term reform priority.

### 5.4 Jurisprudential Development: Labour Court Judgments and the Evolution of Labour Law

Beyond their practical role in resolving individual disputes, the Labour Courts and the Labour Appellate Tribunal play an important jurisprudential role in the development of Bangladesh's labour law through the interpretation and application of the BLA. This jurisprudential function has been inadequately recognized in the existing literature, which tends to focus on the legislative text and on administrative enforcement while paying insufficient attention to the judicial elaboration of labour law through adjudication.

The Supreme Court of Bangladesh, through the High Court Division and the Appellate Division, also plays an important constitutional role in the development of labour law, particularly through the exercise of its writ jurisdiction under Article 102 of the Constitution. Workers and trade unions have used the writ jurisdiction to challenge illegal dismissals, violations of fundamental rights in the workplace, and government decisions that are inconsistent with constitutional provisions. A series of significant High Court Division judgments have elaborated the constitutional dimensions of labour rights, including the right to freedom of association, the right to form and join trade unions, and the right to a fair hearing before disciplinary action.

The 2009 judgment of the High Court Division in BNWLA v. Government of Bangladesh, which laid down mandatory guidelines on sexual harassment in workplaces and educational institutions and declared those guidelines to have the force of law, is a notable example of the court's willingness to use constitutional tools to fill gaps in the statutory framework. The November 2025 Amendment took account of this judgment in its revised provisions on sexual harassment, formally integrating the court's guidelines into the statutory text.

The relationship between the Labour Courts, the Labour Appellate Tribunal, and the Supreme Court is not always harmonious: there have been instances where decisions of the Labour Courts and the Labour Appellate Tribunal have been overturned on writ petitions to the High Court Division, creating uncertainty about the law and encouraging the use of the writ jurisdiction as a substitute for the appeals process. Clearer statutory delineation of the respective jurisdictions of these bodies, and stronger management of the interface between administrative and constitutional adjudication, is needed to rationalize the judicial architecture of labour law.

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## CHAPTER SIX: OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION: FROM RANA PLAZA TO THE INTERNATIONAL ACCORD

### 6.1 The Regulatory Framework for Occupational Safety and Health

Occupational safety and health (OSH) regulation is perhaps the most visible dimension of labour law enforcement in Bangladesh, partly because its failures can be dramatically and tragically visible, and partly because the international garment industry's concern for reputational risk has made OSH compliance in the garments sector a focus of intense international attention. The regulatory framework for OSH in Bangladesh is set out in the BLA, the Occupational Safety, Health and Welfare Rules, 2020, the Boiler Act, and a range of sector-specific regulations.

The BLA imposes obligations on employers in relation to: the structural safety of factory buildings; fire prevention and firefighting equipment; electrical safety; machinery guarding; protection from dangerous fumes and substances; provision of adequate lighting, ventilation, and sanitation; first aid; and general duties of care for the health and safety of workers. These provisions are supplemented by the 2020 Rules, which provide more detailed technical standards on a range of OSH topics, and by the Rana Plaza Response Plan and subsequent sector-specific safety initiatives.

The administration of OSH regulation is primarily the responsibility of DIFE, which has established specialized OSH inspection teams and the Industrial Safety Unit. The National Occupational Safety and Health Training and Research Institute (NOSHTRI) provides training for DIFE inspectors and is intended to serve as a centre of excellence for OSH knowledge and technical capacity in Bangladesh. The 2025 Amendment Ordinance reinforced the institutional framework for OSH administration, incorporating provisions reflecting Bangladesh's ratification of ILO Conventions Nos. 155 (Occupational Safety and Health), 187 (Promotional Framework for Occupational Safety and Health), and 190 (Violence and Harassment).

Bangladesh's ratification of ILO Conventions 155, 187, and 190 on October 22, 2024, as part of a formal signing ceremony attended by Chief Adviser Muhammad Yunus, represented a significant milestone in the country's international OSH commitments. Convention No. 155 requires ratifying states to adopt a coherent national OSH policy and to implement it through an integrated system of OSH law, inspection, and promotion. Convention No. 187 requires the development and implementation of a national programme on OSH. Convention No. 190 requires the elimination of violence and harassment in the world of work, including gender-based violence and harassment. The implementation of these conventions will require sustained institutional development and substantial additional investment in OSH administration.

### 6.2 The Rana Plaza Disaster and Its Institutional Consequences

The collapse of the Rana Plaza building in Savar on April 24, 2013, is the defining event of Bangladesh's contemporary labour administration history. The disaster, which killed 1,134 workers and injured approximately 2,000 others in one of the deadliest industrial accidents in history, revealed in the starkest possible terms the consequences of the systemic failures of Bangladesh's OSH administration: the failure to enforce building safety standards, the lack of effective protection for workers who raised safety concerns, and the impunity with which employers disregarded regulatory requirements in the pursuit of production.

The institutional response to the Rana Plaza disaster was shaped by the convergence of domestic political pressure, international human rights mobilization, and the commercial interests of international garment brands. The Sustainability Compact, negotiated in 2013 between Bangladesh, the EU, the US, and the ILO, committed the Bangladesh government to a comprehensive programme of labour reform including, centrally, the reform of the OSH inspection system. The Accord on Fire and Building Safety, signed by more than two hundred international brands and retailers, established a private-sector remedy funded inspection system for the structural, fire, and electrical safety of RMG factories supplying the participating brands.

The Alliance for Bangladesh Worker Safety, established by a group of North American brands, created a parallel private inspection system covering factories in its supply chains.

The Accord and the Alliance represented a form of private governance of labour standards that was unprecedented in scope and ambition. They demonstrated that private buyers, when faced with sufficient reputational and commercial risk, were willing to invest substantially in the improvement of safety conditions in their supply chains. But they also revealed the structural limitations of private governance: the coverage of both the Accord and the Alliance was limited to factories in the export supply chains of participating brands, leaving out the vast majority of Bangladesh's industrial workforce. And the sustainability of the private inspection model was dependent on the continued commercial engagement of the participating brands, creating vulnerabilities that became apparent as some brands sought to exit Bangladesh or to reduce their financial contributions.

The Accord evolved after 2021 into the International Accord for Health and Safety in the Textile and Garment Industry, with expanded coverage and strengthened governance mechanisms. As of 2025, the International Accord continues to operate in Bangladesh alongside the DIFE inspection system, maintaining a separate database of participating factories, conducting joint inspections with DIFE in some areas, and providing a remediation mechanism for factories found to have safety deficiencies. The relationship between the International Accord and DIFE is managed through a Government Coordination Council (GCC) established under the Ministry of Commerce, which convened eight meetings between 2022 and December 2024 to enhance coordination between the two systems.

The existence of two parallel inspection systems, one public (DIFE) and one private (International Accord), in the same sector raises significant questions of regulatory theory, institutional design, and democratic accountability. From a regulatory theory perspective, the coexistence of the two systems reflects the "governance pluralism" associated with networked and polycentric approaches to regulation. But it also creates coordination challenges, potential duplication of effort, and the risk that the requirements of the private system will diverge from those of the public system in ways that are difficult for factories to manage. From a democratic accountability perspective, the International Accord's governance structure, which gives significant authority to international brands and trade unions rather than to the Bangladesh government and Bangladeshi worker organizations, raises questions about the appropriate location of regulatory authority in a context of global supply chain integration.

### 6.3 Accident Investigation and Reporting: Institutional Gaps and Reform Needs

A critical component of any effective OSH administration is a robust system for the investigation and reporting of workplace accidents. Accident investigation serves multiple functions: it enables the identification of the causes of accidents and the implementation of preventive measures; it provides the evidentiary basis for compensation claims by injured workers and the families of those killed; it creates a record that can be used for statistical analysis and risk-based inspection targeting; and it serves an accountability function by establishing whether the accident resulted from a violation of legal requirements for which the employer should be held legally responsible.

Bangladesh's accident investigation and reporting system suffers from significant structural deficiencies. The BLA requires employers to notify DIFE of workplace accidents that result in death or serious injury within a specified timeframe. Between July 2024 and June 2025, a total of 1,389 accident notices were submitted through the LIMA system, a figure that, given the scale of Bangladesh's industrial workforce and the documented rates of workplace injury and death across various sectors, clearly represents a significant undercount of actual workplace accidents. The undercount reflects several factors: many employers fail to report accidents, particularly minor accidents or accidents in the informal sector; the reporting requirement itself is not effectively enforced; and many workers, particularly in informal employment, do not have access to any mechanism for reporting workplace injuries.

The investigation of reported accidents is conducted by DIFE inspectors, but the inspectorate's capacity for thorough accident investigation is limited by the same resource constraints that affect the broader inspection system. The Technical Committee on Accident Prevention and Casualty established within DIFE has developed protocols for accident investigation and has trained specialized investigators, but the volume of investigations required significantly exceeds available capacity. The result is that the majority of workplace accidents are not thoroughly investigated, the causal analysis needed to support effective preventive measures is frequently inadequate, and the accountability function of accident investigation is rarely fulfilled.

The International Labour Organization's guidance on accident investigation, set out in the Code of Practice on Recording and Notification of Occupational Accidents and Diseases, provides a detailed template for a best-practice accident investigation and reporting system. A systematic program to bring Bangladesh's accident investigation and reporting system into conformity with this guidance, supported by digital reporting infrastructure, trained investigation teams, and effective enforcement of the reporting obligation, would represent a significant improvement in the OSH administration framework.

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## CHAPTER SEVEN: THE EXPORT PROCESSING ZONE LABOUR REGIME: A PARALLEL JURISDICTION AND ITS DISCONTENTS

### 7.1 The Constitutional and Legal Architecture of EPZ Labour Regulation

Bangladesh's Export Processing Zones (EPZs) constitute a parallel jurisdiction within the country's labour law framework, governed by the Bangladesh Export Processing Zones Authority (BEPZA) under the Bangladesh EPZ Labour Act, 2019. This parallel jurisdiction creates a two-tier labour law system in which workers in EPZs are subject to a different regulatory regime from workers in the general economy, a regime that has historically been characterized by restrictions on trade union rights, limited DIFE inspection coverage, and weaker enforcement mechanisms.

The EPZ labour regime has its origins in the developmental logic that underpinned the establishment of EPZs as special economic territories designed to attract foreign investment by offering favorable conditions including tax exemptions, simplified customs procedures, and

flexible labor regulations. The political economy of EPZs reflects a specific bargain between the state, international capital, and domestic business interests: in exchange for the investment and employment that EPZs generate, the state offers a regulatory environment that is less burdensome than that which applies to the general economy. This bargain has been contested by labour rights advocates and international organizations, including the ILO, which has consistently argued that workers in EPZs have the same rights as workers in the general economy and that special EPZ labour regimes that restrict trade union rights and collective bargaining are inconsistent with the fundamental principles of freedom of association.

BEPZA employs its own labour inspection system, operating separately from DIFE, and the coverage and quality of BEPZA's inspection activities have been the subject of persistent concern. The ILO's assessment has noted that spontaneous (unannounced) inspections are rare in EPZs, and reports of corruption are not uncommon. The 2018 amendment to the BLA provided some scope for DIFE inspections in EPZs, but this scope is limited and does not enable the full application of the general labour law framework to EPZ workplaces.

The 2025 Amendment Ordinance addressed the EPZ labour regime in its provisions expanding the scope of application of the general BLA, bringing EPZ workers within the coverage of Chapters XII, XIII, and XIV of the Act relating to accident compensation, trade unions and industrial relations, dispute resolution, and labour courts. This expansion represents a significant step toward the harmonization of EPZ and general labour law, and reflects the recommendations of the Labour Reform Commission, which had called for the full alignment of the EPZ labour regime with the general labour law framework. The precise implementation of these provisions, particularly in relation to the exercise of DIFE inspection authority in EPZs and the application of collective bargaining rights, remains to be worked out through regulations and institutional practice.

### 7.2 Freedom of Association in EPZs: From Worker Association Foundations to Trade Unions

The restriction on trade union formation in EPZs has been one of the most persistent and internationally condemned features of Bangladesh's labour law framework. The Bangladesh EPZ Labour Act, 2019, provided for "Worker Welfare Associations" (WWAs) rather than trade unions in EPZs, arguing that these bodies could serve workers' representative functions without the formal status and legal protections of trade unions. The ILO's Committee on Freedom of Association and the ILO's Committee of Experts repeatedly found that this arrangement was inconsistent with ILO Convention No. 87 on Freedom of Association and Convention No. 98 on the Right to Organize and Collective Bargaining, both of which Bangladesh has ratified and which guarantee the right of all workers, without distinction, to form and join organizations of their own choosing.

The November 2025 Amendment Ordinance included provisions that move toward granting trade union rights to EPZ workers, bringing them within the scope of Chapter XIII of the general BLA. The implementation of these provisions will require, among other things, the establishment of mechanisms for the registration of trade unions in EPZs by the Department of Labour, the training of EPZ management in the legal obligations created by the new framework, and the

development of effective enforcement mechanisms for anti-union discrimination and unfair labour practices in EPZ workplaces.

The political economy of EPZ labour rights reform is complex. International brands that source from EPZ factories are increasingly subject to due diligence requirements, including the EU Corporate Sustainability Due Diligence Directive, that require them to assess and address labour rights risks in their supply chains, including the right of workers to organize. This creates a degree of commercial pressure on EPZ factories to improve their labour rights performance that was absent in earlier periods. At the same time, the EPZ investment promotion argument remains politically powerful, and there is genuine concern that aggressive enforcement of trade union rights in EPZs might lead to investor relocation to less regulated jurisdictions.

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## CHAPTER EIGHT: THE LABOUR REFORM COMMISSION OF 2024-2025: MANDATE, PROCESS, FINDINGS, AND POLITICAL SIGNIFICANCE

### 8.1 Formation and Mandate

The Labour Reform Commission established by the interim government on November 17, 2024, represents one of the most ambitious attempts in Bangladesh's post-independence history to comprehensively review and reform the country's labour law and administration framework. Formed in the immediate aftermath of the July Revolution of 2024, which had been driven in significant part by the mobilization of workers and students against the Hasina government, the commission was explicitly charged with formulating reform proposals that would protect labour rights, ensure the welfare of all working people, and contribute to a "new Bangladesh" in which the oppression and persecution of workers would not be repeated.

The commission was constituted under the chairmanship of Syed Sultan Uddin Ahmed, Executive Director of the Bangladesh Institute of Labour Studies (BILS), and included ten members representing a broad range of stakeholders: academic researchers, former senior civil servants, trade union leaders, employer representatives, and labour movement organizers. The inclusion of Taslima Akhter, a photographer and labour movement organizer who had documented the Rana Plaza disaster and its aftermath and who became the commission's most vocal public advocate, gave the commission a symbolic connection to the lived experiences of workers that formal government commissions often lack.

The commission's terms of reference were broad, covering: the review of existing labour legislation and its gaps; proposals for new legislation; institutional reforms; social protection; workers' housing; and international labour standards compliance. The commission conducted its work through a process of consultation with stakeholders and various organizations and institutions, receiving submissions and evidence from trade unions, employer associations, civil society organizations, international bodies, and individual workers.

### 8.2 Principal Findings and Recommendations

The commission submitted its report to Chief Adviser Professor Muhammad Yunus in April 2025, under the title "The Transformation Framework of the World of Work: Workers' Rights, Harmonized Industrial Relations and Inclusive Development." The report is a comprehensive and ambitious document that addresses every major aspect of Bangladesh's labour law and administration framework, and its principal findings and recommendations deserve systematic analysis.

On the definition of "worker," the commission recommended the introduction of a universal definition that would include all types of employment, formal and informal, within the scope of the Bangladesh Labour Act. This recommendation responds to one of the most fundamental structural deficiencies of the existing law, which leaves millions of workers in domestic service, agriculture, informal trade, and casual employment outside the Act's protective framework. The commission also recommended the introduction of a digital worker identification system and a central registration database, which would enable the government to know who the country's workers are, where they are employed, and what rights they are entitled to.

On the institutional framework, the commission recommended the fundamental strengthening of DIFE, including a substantial increase in inspector numbers and resources, the transition to a risk-based inspection system, the comprehensive digital integration of inspection management, and the enhancement of DIFE's legal capacity through the appointment of additional legal officers and the development of effective legal follow-up mechanisms for violations identified in inspections. The commission specifically recommended that factories be required to make online wage payment submissions to DIFE every month, creating a real-time wage monitoring system that would dramatically improve DIFE's ability to detect wage theft and non-compliance with minimum wage requirements.

On workers' housing, the commission recommended the formulation of a Workers' Housing Policy to construct affordable housing in industrial and labour-intensive areas through public-private partnership, the incorporation of provisions in the National Housing Policy to facilitate elderly, retired, and disabled workers in obtaining housing in every district, the establishment of a Workers' Housing Fund to ensure low-cost housing for all workers, and increased budget allocation for low-interest home loans for workers. This recommendation recognizes that effective labour law enforcement requires addressing not only the conditions of the workplace but also the broader conditions of workers' social reproduction, including the availability of affordable housing in areas of industrial employment concentration.

On workers with special needs, the commission recommended the incorporation of specific legislative provisions to ensure the rights of workers with disabilities, chronic illnesses, and other special needs, recognizing that the existing labour law framework is inadequate for the diverse needs of all workers.

On the international dimension, the commission's report strongly endorsed Bangladesh's ratification of ILO Conventions 155, 187, and 190, which had occurred in October 2024, and called for the accelerated implementation of the obligations these conventions impose.

### 8.3 Political Significance of the Commission and Its Report

The Labour Reform Commission and its report are significant not only for their substantive content but for their political significance within Bangladesh's broader post-July Revolution context. The commission was formed at a moment of unusual political openness, when the interim government, not beholden to the conventional political debts and constraints of an elected administration, had both the opportunity and, at least initially, the political will to pursue reforms that had been blocked for decades by the political power of the employer lobby.

The commission's report was submitted to Chief Adviser Yunus at a formal ceremony at the State Guest House Jamuna on a Monday in late April 2025, an event that was itself politically symbolic: the public presentation of a comprehensive reform agenda by a body that included trade union leaders and a labour movement organizer representing workers who had participated in the July Revolution.

The subsequent path of the commission's recommendations has been less smooth. The November 2025 Amendment Ordinance incorporated many, though not all, of the commission's recommendations, and some of the most transformative proposals, including the universal definition of "worker" and the comprehensive workers' housing programme, were not included in the ordinance and remain subjects of ongoing policy deliberation. The employers' lobby, represented by the Bangladesh Employers' Federation and sectoral associations, engaged intensively with the process and succeeded in moderating some of the more ambitious provisions. The tension between the reform ambitions of the commission and the political power of the employer lobby reflects the fundamental political economy of labour law reform in Bangladesh, which no commission report, however comprehensive, can simply transcend.

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## CHAPTER NINE: THE LIMA DIGITAL PLATFORM AND THE PROMISE OF REGULATORY TECHNOLOGY

### 9.1 RegTech and Labour Administration: Theoretical Frameworks

The digitalization of labour administration, often described under the umbrella concept of "regulatory technology" or "RegTech," represents one of the most significant developments in contemporary regulatory theory and practice. The application of digital technology to regulatory processes, including inspection management, compliance monitoring, data analysis, and reporting, offers the potential to dramatically improve the efficiency and effectiveness of regulatory systems by reducing administrative costs, improving data quality, enabling real-time monitoring, and supporting evidence-based regulatory decision-making.

The theoretical literature on RegTech is still developing, but several important analytical frameworks have emerged. The "regulatory informatics" framework associated with scholars such as Viktor Mayer-Schonberger and Kenneth Cukier emphasizes the transformative potential of large-scale data collection and analysis for regulatory governance, arguing that the availability of real-time digital data about regulated entities' behaviour enables regulators to identify compliance problems with far greater speed and precision than traditional inspection-based systems. The "algorithmic regulation" framework associated with Antoinette Rouvroy and others

raises important concerns about the implications of data-driven regulation for principles of due process, transparency, and human rights, arguing that algorithmic systems can obscure the value judgments embedded in regulatory decisions and can produce systematic biases against the most vulnerable regulated parties.

For Bangladesh's labour administration, the digital infrastructure represented by the LIMA platform must be assessed against both of these theoretical frameworks. LIMA's potential contribution to more effective labour administration is real: the digitalization of inspection management, license processing, and accident reporting does create new possibilities for data-driven inspection targeting, transparency, and accountability. But the realization of this potential depends on the quality of the data entered into the system, the analytical capacity of the officials who use it, and the institutional culture and incentive structures within which it operates. A digital system that records incomplete or inaccurate data, that is used primarily as a compliance reporting mechanism rather than as a genuine management tool, and that is deployed within an institutional culture of enforcement avoidance, will not transform the quality of labour administration regardless of its technical sophistication.

### 9.2 LIMA in Practice: Current Status and Technical Assessment

The Labour Inspection Management Application, developed with ILO technical support and gradually rolled out across DIFE's field offices since 2018, has become the primary digital platform for the management of DIFE's core regulatory functions. As of 2025, LIMA processes: layout plan approvals, factory license applications and renewals, occupational health and safety reports, worker grievance management, inspection planning and data recording, and accident notification. The system is accessible through both desktop and mobile interfaces, enabling field inspectors to record inspection findings in real time using mobile devices.

The system's performance data for the 2024-2025 period shows significant volumes of activity: 43,265 inspections conducted, 8,697 new licenses issued, 30,783 licenses renewed, and 2,445 layout plans approved, all processed through the LIMA platform. The digital helpline (16357) operated through the platform received 5,214 complaints during the same period, and the system maintains a database of all complaints and their resolution status.

The technical strengths of the LIMA system include: its integration of multiple regulatory functions within a single platform, enabling coordination between different aspects of DIFE's activities; its support for mobile data collection, enabling real-time recording of inspection findings; its role in reducing physical interactions between inspectors and employers, thereby reducing corruption opportunities; and its generation of data that enables institutional performance monitoring.

The technical limitations of the system include: uneven connectivity and device availability across different field offices; data quality problems arising from inconsistent recording practices by individual inspectors; the absence of integration with other government databases that would enable cross-checking of reported information; and limited analytical capacity within DIFE to extract actionable insights from the data collected.

### 9.3 Digital Wage Monitoring: The Commission's Recommendation and Its Implementation

The Labour Reform Commission's recommendation that factories be required to submit wage payment information online to DIFE every month represents one of the most practically significant applications of digital technology to labour administration proposed in the 2025 reform package. If implemented effectively, this measure would transform DIFE's ability to monitor compliance with minimum wage requirements and detect wage theft, which is one of the most pervasive and economically significant forms of labour law violation in Bangladesh.

The current approach to wage compliance monitoring is almost entirely inspection-based: inspectors visit factories, examine wage registers, and interview workers to assess whether wages are being paid at or above the required minimum rate. This approach is fundamentally limited by the same resource constraints that affect the inspection system as a whole: with 724 inspectors responsible for over 220,000 registered establishments, systematic wage compliance monitoring through inspection is simply impossible. Factories that are not inspected, which means the vast majority of registered establishments in any given period, can pay below-minimum wages without any realistic risk of detection through the inspection system.

A mandatory digital wage reporting system, in which all covered establishments submit monthly wage data to DIFE through a standardized digital form, would fundamentally change this dynamic. With monthly wage data for all covered establishments, DIFE's analytical capacity could be used to identify statistical anomalies that are inconsistent with genuine minimum wage compliance, enabling targeted follow-up inspections of the establishments most likely to be in violation. This approach is analogous to the use of financial data reporting for the enforcement of tax law, and its application to wage compliance monitoring has been piloted in several countries with significant positive results.

The implementation of mandatory digital wage reporting in Bangladesh faces significant challenges. Many smaller establishments lack the digital infrastructure to submit reports online, and the requirement must be phased in with adequate support for digital adoption. The privacy of wage data must be protected through appropriate data security measures. And the analytical capacity within DIFE needed to use the wage data effectively must be developed through training and institutional capacity building. But the fundamental direction of the reform is sound, and its implementation should be a priority for the 2025-2030 period.

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## CHAPTER TEN: THE SOCIAL PARTNERS: TRADE UNIONS, EMPLOYERS' ASSOCIATIONS, AND THE INFRASTRUCTURE OF COLLECTIVE LABOUR RELATIONS

### 10.1 The Organizational Landscape of Bangladesh's Trade Union Movement

Understanding the institutional infrastructure of labour law enforcement requires attention not only to state institutions but to the organizational capacity of the social partners, particularly trade unions, whose effectiveness as advocates for workers' rights and as monitors of employer

compliance is a critical complement to state enforcement capacity. A strong and well-organized trade union movement can do things that state inspectors cannot: it can identify violations through the daily presence of workers in their own workplaces, it can gather evidence of violations that might be concealed from external inspectors, it can provide workers with information about their rights and the mechanisms for enforcing them, and it can exert collective economic pressure on employers that makes rights violations costly in a way that state enforcement alone cannot reliably achieve.

Bangladesh's trade union movement is organizationally fragmented, politically divided, and collectively weak relative to the challenge of organizing and protecting the country's vast workforce. As of the most recent reporting, approximately ten thousand unions are officially registered in Bangladesh, but only a fraction of these are genuinely operational, and only a tiny proportion have achieved Collective Bargaining Agent status and are engaged in active collective bargaining with employers. The rate of trade union density, the proportion of the workforce that is union members, is approximately five percent, one of the lowest in Asia and far below the levels needed for effective collective representation of workers' interests.

The reasons for this weakness are multiple and interrelated. The historical prohibition on trade unions in EPZs, discussed above, has excluded a large and growing portion of the industrial workforce from the union movement. The stringent registration requirements under the old thirty-percent membership threshold, before the November 2025 Amendment, made it difficult to form effective enterprise-level unions in many settings. The pattern of anti-union discrimination by employers, including dismissal of union organizers and blacklisting of union members, has imposed high individual costs on workers who attempt to organize. The political fragmentation of the union movement, organized along partisan lines with different federations affiliated to different political parties, has undermined internal solidarity and facilitated employer divide-and-rule strategies. And the culture of violence against trade unionists, documented in numerous reports, has created a climate of intimidation in which union organizing is perceived as personally dangerous.

The reduction of the union formation threshold to twenty workers for the apparel sector, introduced in the November 2025 Amendment, is potentially a significant reform if it is accompanied by effective enforcement of the protection against anti-union discrimination. The risk is that employers respond to the lower threshold by intensifying their suppression of union organizing at the early stages, before unions reach the registration threshold, rather than by accepting the new legal reality of broader union rights. The DoL's enforcement capacity and political will are therefore critical determinants of whether the lower threshold translates into genuinely expanded collective bargaining rights or merely creates formal legal permission that employers prevent workers from exercising in practice.

### 10.2 The Employers' Federation and the Political Economy of Employer Representation

The Bangladesh Employers' Federation (BEF) and the sectoral associations that represent employers in Bangladesh's major industries, including the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), and others, are well-organized, well-resourced, and politically influential

participants in the labour governance system. Their capacity to engage with regulatory processes, to mobilize political pressure against unfavorable legislation, and to shape the implementation of labour standards is vastly greater than the corresponding capacity of worker organizations.

The BEF's response to the 2025 reform process, documented in its public statements and in its engagement with the tripartite consultation process, illustrates the sophisticated political strategy through which employer organizations participate in labour governance. The BEF endorsed the broad direction of reform while expressing detailed concerns about specific provisions that it regarded as impractical or economically damaging. It invoked the principle of tripartism to argue that reforms imposed without adequate tripartite consultation were illegitimate, while simultaneously being accused by workers' representatives of seeking to use tripartism as a veto mechanism against reforms to which it objected. It called for reforms that were "pragmatic, nationally owned, and institutionally enforceable," framing its opposition to specific provisions not in terms of its members' immediate economic interests but in terms of the general public interest in sustainable economic development.

This rhetorical sophistication is characteristic of employer organizations in market economies and reflects what Braithwaite and Drahos have described as the "capture" of regulatory processes by regulated entities. The BEF's argument that "Bangladesh's challenges are not about passing laws on paper; they are about ensuring the institutions and workforce have the capacity to make those laws meaningful" is, in an abstract sense, correct. But it can also serve as a permanent deferral mechanism: the argument that enforcement capacity must be built before stronger standards are imposed can be used to resist any specific strengthening of standards by pointing to the inevitably incomplete state of enforcement capacity. The challenge for regulatory design is to strengthen enforcement capacity and standards simultaneously, rather than sequencing them in a way that allows the argument for deferral to succeed indefinitely.

### 10.3 The International Dimensions of Social Dialogue: ILO, EU, and Supply Chain Governance

The tripartite system of social dialogue in Bangladesh operates not only at the domestic level but also within an international framework of standards, monitoring, and pressure that has become increasingly important in shaping domestic labour governance. The ILO's supervisory machinery, including the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, provides an ongoing international assessment of Bangladesh's compliance with its ILO obligations. The ILO's Governing Body, which reviews progress on the 2021-2026 Labour Sector Roadmap, provides a political oversight mechanism that creates accountability at the highest level of international institutional engagement.

The European Union's trade relationship with Bangladesh, through the Generalized System of Preferences (GSP), provides another dimension of international leverage. Bangladesh's access to the EU market under the "Everything But Arms" arrangement, which grants duty-free and quota-free access for all products except arms and ammunition, is technically conditioned on compliance with certain international standards including core ILO conventions. The EU's scrutiny of Bangladesh's labour rights performance, formalized through the Sustainability

Compact and the ongoing bilateral engagement, creates a degree of external accountability that has been important in sustaining momentum for reform.

The EU Corporate Sustainability Due Diligence Directive, adopted in 2024, creates a new dimension of supply chain governance that is directly relevant to Bangladesh's labour administration. The Directive requires large EU companies and companies doing business in the EU to exercise due diligence in relation to human rights and environmental impacts throughout their supply chains, including the supply chains located in Bangladesh. This requirement creates powerful commercial incentives for EU brands to ensure that their Bangladeshi suppliers comply with international labour standards, and it has the potential to generate significant additional monitoring capacity and pressure for compliance in the export supply chain, complementing the state's enforcement capacity.

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## CHAPTER ELEVEN: ADMINISTRATIVE LAW DIMENSIONS OF LABOUR ADMINISTRATION: DUE PROCESS, TRANSPARENCY, AND ACCOUNTABILITY

### 11.1 Labour Administration and the Principles of Administrative Law

The administration of labour law takes place within the broader framework of administrative law, which establishes the principles that govern the exercise of public power and that provide the legal basis for challenging administrative decisions that are unlawful, irrational, or procedurally unfair. Understanding the administrative law dimensions of labour administration is essential for a complete account of the legal framework, and it is an aspect of the subject that is frequently underemphasized in the labour law literature.

The general principles of administrative law applicable to labour administration in Bangladesh include: the principle of legality (that administrative action must be authorized by law); the principle of procedural fairness (that those affected by administrative decisions must be given notice and the opportunity to be heard); the principle of reasonableness (that administrative decisions must be rationally connected to the purposes of the empowering legislation); and the principle of good faith (that administrative power must not be exercised for improper purposes).

These principles are given constitutional expression in Part III of the Bangladesh Constitution, which guarantees, among other things, the right to equality before the law (Article 27), the right to protection from discrimination (Article 28), the right to protection of life and personal liberty (Article 32), and the right to a fair hearing (which the courts have derived from the constitutional framework as a fundamental right). They are also given statutory expression in the General Clauses Act, the Code of Civil Procedure, and the specific procedural provisions of the BLA and the Bangladesh Labour Rules.

The application of these principles to DIFE's inspection and enforcement activities creates a set of procedural obligations that are not always fully honored in practice. An employer facing a compliance notice or a prosecution must be given adequate notice of the alleged violation and the opportunity to respond before any final determination is made. An inspector who issues a

compliance notice must be acting within the scope of his or her legal authority and must not be acting for improper purposes. A decision to refuse trade union registration must be based on legally authorized grounds and must be accompanied by adequate reasons.

### 11.2 Judicial Review of Labour Administration Decisions

The High Court Division of the Supreme Court exercises supervisory jurisdiction over administrative action through its writ powers under Article 102 of the Constitution. Workers, trade unions, and employers all have standing to challenge decisions of DIFE, the DoL, the Ministry of Labour, and the Labour Courts through writ petitions, subject to the requirement that writ relief is not available where an adequate alternative remedy exists.

The writ jurisdiction has been used to challenge a range of labour administration decisions, including: refusals to register trade unions, decisions to deregister existing unions, enforcement decisions of DIFE inspectors, and procedural decisions of Labour Courts. The judgments of the High Court Division in these cases have contributed to the jurisprudential development of the administrative law of labour administration, establishing principles of procedural fairness, reasonableness, and legality that apply to the exercise of administrative discretion in the labour field.

The relationship between the writ jurisdiction and the statutory remedies provided by the BLA is complex and has been a source of significant doctrinal controversy. The courts have held that the writ jurisdiction is supplementary to, not a substitute for, the statutory remedies, but they have also been willing to exercise the writ jurisdiction where the statutory remedy is inadequate or where the violation of fundamental rights requires constitutional intervention. This has created a body of constitutional labour law that sits alongside, and sometimes in tension with, the statutory framework.

The development of a comprehensive and accessible system of judicial review of labour administration decisions is an important component of any effective labour governance system. At present, the practical accessibility of the writ jurisdiction for the typical worker is very limited: the costs and complexity of Supreme Court litigation place it beyond the reach of most workers without legal aid support, and the delays of the High Court Division's own proceedings mean that writ petitions may take years to resolve. The development of more accessible mechanisms for challenging labour administration decisions, including a strengthened administrative appeals mechanism within DIFE and the DoL, would be an important complement to the writ jurisdiction.

### 11.3 Freedom of Information and Transparency in Labour Administration

The principle of transparency in public administration, recognized in international human rights law and administrative law theory, requires that public authorities make available to citizens the information they need to hold those authorities accountable. In the context of labour administration, transparency requires, among other things: the publication of annual labour inspection reports with detailed data on inspection activities, violations found, and enforcement actions taken; the public availability of factory safety and compliance data; the public

availability of trade union registration decisions and the reasons for them; and the public accessibility of Labour Court judgments.

Bangladesh's performance on administrative transparency in the labour domain has been mixed. The BLA requires that DIFE publish annual labour inspection reports and transmit them to the ILO, but the regularity of publication has been inconsistent and the detail of the information provided has often been inadequate by the standards required by ILO Convention No. 81. The LIMA platform has the potential to generate much richer data on inspection activities and enforcement outcomes than has historically been available, and the institutional development of DIFE's reporting capacity should be a priority for the reform agenda.

The Right to Information Act, 2009, provides a statutory framework for citizen access to government-held information, and it is in principle applicable to information held by DIFE, the DoL, and the Ministry of Labour. In practice, the effective use of the Right to Information Act by workers and worker organizations to access labour enforcement information has been limited, partly due to lack of awareness of the Act's provisions and partly due to administrative resistance to disclosure. Strengthening the practical implementation of the Right to Information Act in the labour domain, and developing proactive disclosure policies that make key enforcement information publicly available without the need for individual information requests, would significantly enhance the accountability of the labour administration system.

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## CHAPTER TWELVE: THE NATIONAL OCCUPATIONAL SAFETY AND HEALTH TRAINING AND RESEARCH INSTITUTE: INSTITUTIONAL CAPACITY AND REFORM NEEDS

### 12.1 Institutional Mission and Current Capacity

The National Occupational Safety and Health Training and Research Institute (NOSHTRI), established within the organizational structure of MoLE, serves as the principal centre for OSH training and research in Bangladesh. Its institutional mission encompasses: the training of DIFE inspectors in OSH subjects; the development of OSH training materials and standards; research into OSH conditions and hazards across different industrial sectors; and the provision of technical advisory services on OSH matters. NOSHTRI represents the primary institutional vehicle through which the technical expertise needed for effective OSH administration is developed and maintained.

NOSHTRI has made significant contributions to the capacity development of DIFE's OSH inspection cadre. The eight specialized OSH teams within DIFE, covering machinery safety, accident prevention, chemical safety, ergonomics, boiler and pressure vessel safety, construction safety, labour-friendly dialogue, and cranes and lifting equipment, have completed Training of Trainer (ToT) programmes through NOSHTRI and provide ongoing training to DIFE inspectors and stakeholders. The development of OSH inspection checklists for different sectors, the creation of Standard Operating Procedures for OSH inspection, and the training of engineers in structural, fire, and electrical safety standards all represent important institutional outputs.

However, NOSHTRI's institutional capacity remains significantly below the level needed to support a comprehensive and effective OSH administration system. The institute's staffing and budget are inadequate for the scale of the training need: with over 220,000 registered establishments and a workforce of tens of millions, the demand for OSH training, not only for inspectors but for workplace safety officers, first aiders, and workers generally, is enormous relative to NOSHTRI's supply capacity. The institute's research capacity, while potentially valuable, has been limited by resource constraints and has not yet generated the systematic sector-specific OSH data that would support evidence-based inspection targeting and policy development.

### 12.2 International Benchmarks and the Path to Institutional Excellence

International benchmarks for national occupational safety and health institutes provide a useful framework for assessing NOSHTRI's current capacity and identifying the priorities for institutional development. The Finnish Institute of Occupational Health (FIOH), the Korean Occupational Safety and Health Agency (KOSHA), and the UK Health and Safety Executive's Training and Research Division all represent examples of high-capacity national OSH institutions with extensive research programmes, comprehensive training facilities, and deep technical expertise across a wide range of OSH subjects.

Bangladesh is, of course, a country at a very different stage of economic and institutional development from Finland, Korea, or the United Kingdom, and it would be unrealistic to expect NOSHTRI to achieve in the short term a level of institutional capacity comparable to these advanced examples. But the comparison is instructive in identifying the direction of travel: toward a research-based, technically sophisticated, institutionally independent OSH centre that can provide DIFE and the broader public with the scientific and technical foundation for effective OSH governance.

The priorities for NOSHTRI's institutional development include: increased budget allocation for staffing, facilities, and research programmes; development of sector-specific OSH training programmes that go beyond the current coverage of the RMG sector to address construction, shipbreaking, agriculture, domestic work, and other high-risk sectors; establishment of collaborative research programmes with national universities and international research institutions; development of OSH databases and surveillance systems that provide systematic information on workplace hazards and health outcomes; and engagement with ILO's LABADMIN/OSH programme to access international technical expertise and good practice.

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## CHAPTER THIRTEEN: SOCIAL PROTECTION AND LABOUR ADMINISTRATION: THE WORKERS' WELFARE INFRASTRUCTURE

### 13.1 The Workers' Profit Participation Fund and Central Workers' Fund

The Bangladesh Labour Act establishes two worker welfare financial mechanisms that constitute part of the broader social protection infrastructure for workers: the Workers' Profit Participation

Fund (WPPF) and the Central Fund. Under Section 232 of the BLA, companies with one hundred or more workers are required to contribute five percent of their net profits to a fund, divided between the WPPF for participating workers and a central fund administered by the government for workers' welfare. These provisions represent a form of profit-sharing that is intended to give workers a direct stake in the commercial success of their enterprise and to provide a source of funding for collective worker welfare programmes.

The implementation of the WPPF provisions has been problematic. Many covered establishments have failed to make the required contributions, enforcement of the contribution obligation has been weak, and the calculation of the "net profit" base from which the contribution is calculated has been contested in many cases, with employers using accounting practices that reduce the effective contribution. The Labour Reform Commission's report identified the strengthening of WPPF enforcement as a priority reform, and the November 2025 Amendment includes provisions designed to improve compliance.

The Central Fund, administered by the Ministry of Labour, has accumulated resources over the years but its deployment for worker welfare has been limited by administrative inertia and the difficulty of reaching the intended beneficiaries. The reform of the Central Fund's governance and the development of more effective mechanisms for deploying its resources in support of workers' welfare, particularly in the areas of housing, health care, and retirement security, represents an important area of labour administration reform.

### 13.2 Employment Injury Insurance: From Compensation to Insurance

Bangladesh's system for compensating workers injured in workplace accidents has historically operated through a compensation-based framework under Chapter XII of the BLA, under which injured workers or their dependants can claim compensation from the employer through the Labour Court. This system has significant limitations: many injured workers are unable to navigate the Labour Court process without assistance, compensation awards are often inadequate relative to actual losses, employers frequently dispute liability and delay payment, and the insolvency of the employer can render compensation awards uncollectible.

The ILO's Employment Injury Insurance Model, being piloted in Bangladesh with ILO support under the Employment Injury Insurance Scheme (EIIS), represents a fundamentally different approach. Under the insurance model, employers contribute to a central insurance fund, and injured workers claim compensation from the fund rather than directly from the employer. This approach decouples compensation from the financial capacity and good faith of the individual employer, provides more certain and reliable compensation for workers, and reduces the burden on the Labour Court system by removing compensation disputes from the litigation framework.

The Employment Injury Insurance Scheme, piloted in the RMG sector with support from the German Development Cooperation and the ILO, has generated valuable experience and evidence about the feasibility and cost-effectiveness of the insurance model in Bangladesh. The November 2025 Amendment incorporated provisions for the expansion of the scheme, reflecting Bangladesh's ratification of ILO Convention No. 121 on Employment Injury Benefits. The development of a comprehensive employment injury insurance system, covering all workers in

the formal economy and eventually extending to the informal economy, represents one of the most important medium-term priorities for the labour administration reform agenda.

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## CHAPTER FOURTEEN: CONTROVERSIES, CONTESTED TERRAIN, AND SYSTEMIC CRITIQUES

### 14.1 The Structural Critique: Is Labour Administration Reform Sufficient?

The comprehensive analysis of labour administration developed in this Part has focused on institutional reform: improving DIFE's inspection capacity, strengthening the Labour Courts, reforming the DoL's dispute resolution functions, expanding the reach of OSH regulation, and digitizing key administrative processes. These reforms are important and necessary, but they are also subject to a fundamental structural critique: that the problems of labour administration in Bangladesh are not primarily institutional problems that can be solved by improving administration but are political and economic problems rooted in the structural distribution of power in Bangladeshi society, and that institutional reform without political economic transformation will produce, at best, marginal improvements in workers' actual conditions.

This structural critique draws upon the Marxist and critical legal theory traditions surveyed in Chapter One of this Part. From a structural perspective, the inadequacy of Bangladesh's labour administration is not an accident or a failure of institutional design: it is a predictable and, in a sense, functional consequence of a political economy in which the garment industry and other export industries occupy a dominant position, in which workers are organizationally weak and politically underrepresented, and in which the state's development agenda prioritizes export competitiveness over workers' rights. In this context, labour administration reforms can only go as far as the political economy allows, and the political economy creates a structural ceiling on the ambitions of reform.

This critique is not a counsel of despair: it does not mean that institutional reform is pointless or that it makes no difference to workers' conditions. It does mean that reform must be accompanied by, and indeed must contribute to, the strengthening of workers' organizational capacity and political voice, because without those elements, the political space for effective labour administration will always be constrained. The reduction of the union formation threshold to twenty workers is therefore not just a technical regulatory reform but a political reform, one that could, if accompanied by effective anti-discrimination enforcement, contribute to a shift in the political balance of power in the labour field that would create conditions for more effective administration across the board.

### 14.2 The Corruption Critique: Structural Corruption vs. Individual Deviance

The analysis of corruption in DIFE's inspection system, presented in Chapter Three, requires elaboration through a structural lens. The conventional approach to corruption treats it as individual deviance: individual officials act corruptly, and the solution is to identify and punish the corrupt officials while deterring future corruption through the threat of sanctions. This

approach, while not without merit, misunderstands the structural character of corruption in Bangladesh's labour administration.

Corruption in DIFE is not primarily the product of individual moral failure: it is a structural feature of an institution in which low salaries, high discretionary authority, weak monitoring, and a culture in which corrupt practices are normalized and expected create systemic incentives for corrupt behaviour that most individuals, placed in the relevant institutional context, will respond to in predictable ways. Understanding corruption as structural rather than individual has important implications for reform strategy: it suggests that anti-corruption measures focused on punishment of individual officials will have limited impact unless they are accompanied by structural reforms that change the incentive environment within which officials operate.

The extension of the factory license renewal period from one year to five years, discussed in Chapter Three, illustrates this structural analysis in concrete terms. The reform reduces the frequency of the licensing interaction that provides the primary opportunity for corrupt rent extraction, and it thereby reduces the structural incentive for corruption associated with the licensing function. But it does not address corruption associated with other inspection activities, and it creates new risks if the reduction in annual compliance pressure enables employers to accumulate safety and labour violations over the five-year period between license renewals.

The structural approach to anti-corruption reform suggests a package of measures: significant salary increases for DIFE inspectors, to reduce the economic incentive for supplement-seeking through corrupt activities; digitalization of inspection processes, to reduce discretionary face-to-face interactions between inspectors and employers; publication of individual inspectors' enforcement records, to increase reputational accountability; and cultural change initiatives within DIFE that promote a professional identity as a rights enforcer rather than as a bureaucratic operator within a corrupt system.

### 14.3 The Legitimacy Crisis: Labour Administration and Post-Revolutionary Bangladesh

The July Revolution of 2024 created a moment of profound institutional rupture in Bangladesh. The political coalition that had controlled the state for fifteen years was displaced by popular mobilization, and an interim government was installed that lacked conventional electoral legitimacy but claimed transformative democratic legitimacy as the expression of popular resistance to authoritarian governance. This context of institutional rupture creates both opportunities and risks for labour administration reform.

The opportunities are real: the interim government's formation of the Labour Reform Commission, its ratification of ILO Conventions 155, 187, and 190, and its promulgation of the November 2025 Amendment Ordinance all reflect a genuine window of political opportunity that a conventional elected government, beholden to the employer lobby, might not have opened. The commission's comprehensive reform agenda, the tripartite consultation process, and the ordinance's expansive treatment of trade union rights all represent steps that had been blocked for years by the political power of employer organizations.

The risks are equally real. The interim government's legitimacy, while strong in the immediate aftermath of the July Revolution, is inherently temporary, and the political space for reform may narrow as the political economy reasserts itself through the reemergence of conventional electoral politics. The employer lobby's sophisticated engagement with the reform process, documented in the BEF's public statements, reflects a strategy of managing rather than blocking reform, accepting formal legal changes while working to limit their practical implementation through regulatory interpretation, enforcement discretion, and political pressure on the institutions responsible for implementation.

The question of whether the reforms of the 2024-2025 period will prove durable or will be progressively diluted through the politics of implementation is ultimately a political question, not a legal one. The answer depends on whether the organizational capacity of workers, the political will of the state, and the international accountability mechanisms provided by the ILO, the EU, and global supply chain governance can sustain sufficient pressure for implementation to overcome the institutional and political resistance of those with interests in the status quo.

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## CHAPTER FIFTEEN: TOWARDS A REFORMED LABOUR ADMINISTRATION: PRINCIPLES, PRIORITIES, AND A PROGRAMMATIC VISION

### 15.1 Foundational Principles for a Reformed Labour Administration

The comprehensive analysis developed in this Part provides the basis for articulating a set of foundational principles that should govern the design and implementation of a reformed labour administration in Bangladesh.

The first is the principle of comprehensiveness: the reformed system must extend its effective reach to all workers in all sectors, including the informal economy, agricultural workers, domestic workers, home-based workers, and migrants. The current patchwork of coverage, in which formal sector workers in large export enterprises have access to meaningful institutional protection while the majority of workers in the informal economy have virtually none, is inconsistent with the constitutional commitment to the emancipation of all working people and with Bangladesh's international human rights obligations.

The second is the principle of effectiveness: formal legal provisions and institutional structures must be designed and resourced to produce genuine improvement in workers' actual conditions, not merely to create the appearance of compliance for international audiences. The persistent gap between formal law and social reality in Bangladesh's labour administration is not an unavoidable feature of the country's development stage but a product of choices about resource allocation, institutional design, and political priorities that can and must be made differently.

The third is the principle of democratic accountability: the institutions of labour administration must be accountable to the workers they serve, not only upward to the ministry and the government but outward to the constituencies they are designed to protect. This requires: publication of inspection reports and enforcement data in accessible formats; effective complaint

and appeal mechanisms; meaningful participation by workers and worker organizations in the governance of key institutions; and parliamentary oversight of labour administration performance.

The fourth is the principle of non-domination: the reformed administration must be designed to protect workers from the conditions of domination, defined as vulnerability to arbitrary interference by employer power, that characterize the present system. This means not only formal rights but effective mechanisms for preventing and remedying the retaliation, discrimination, and harassment that workers face when they attempt to assert their rights.

The fifth is the principle of structural awareness: reform efforts must be accompanied by awareness of the structural political economic conditions that generate and sustain inadequate labour administration, and must therefore include measures that build the organizational capacity of workers, strengthen the institutions of tripartism, and create countervailing political forces capable of sustaining the pressure for effective enforcement over the long term.

### 15.2 A Programme for Institutional Reform: Short, Medium, and Long-Term Priorities

The reform agenda for Bangladesh's labour administration can be organized into three time horizons, reflecting different levels of institutional complexity and political ambition.

In the short term, between 2025 and 2027, the most urgent priorities are the implementation of the November 2025 Amendment Ordinance's provisions on inspection, trade union rights, and dispute resolution. This includes: the creation of a digital trade union registration case management system within the DoL; the amendment of DIFE inspection plans to integrate risk-based inspection methodology; the implementation of mandatory digital wage reporting by covered establishments; the recruitment and training of additional labour inspectors to begin closing the inspector-to-worker ratio gap; the establishment of fast-track Labour Court procedures for straightforward monetary claims; and the strengthening of the anti-union discrimination enforcement mechanism within the DoL.

In the medium term, between 2027 and 2030, the reform programme should focus on: the expansion of the Labour Court system to at least one court per district; the development and implementation of a comprehensive National Occupational Safety and Health Programme under ILO Convention No. 187; the expansion of the Employment Injury Insurance Scheme to cover all formal sector workers; the development of comprehensive coverage mechanisms for informal sector workers, including community-based inspection, digital registration systems, and access to labour courts; the reform of NOSHTRI to develop a comprehensive multi-sector OSH training and research capacity; and the development of a statutory Workers' Housing programme drawing on the Labour Reform Commission's recommendations.

In the long term, beyond 2030, the reform vision should aspire to: the extension of meaningful labour law coverage to the entire workforce, including agricultural, domestic, and informal workers; the achievement of an inspector-to-worker ratio that approaches ILO benchmarks; a fully digitalized and data-driven labour inspection system that provides real-time information on compliance conditions across the economy; a strong and independent trade union movement that

provides effective collective protection for workers in all sectors; a social protection system that ensures all workers against the major risks of working life, including injury, illness, unemployment, and old age; and a tripartite system of labour governance that genuinely embodies the principles of communicative rationality that Habermas's framework identifies as necessary for legitimate democratic institutions.

### 15.3 The International Dimension: ILO Technical Assistance, EU Conditionality, and Supply Chain Governance

The reform of Bangladesh's labour administration cannot be understood or pursued in isolation from the international context. Bangladesh's engagement with the ILO, the European Union, and the governance systems of global supply chains will continue to be major determinants of the pace and character of institutional reform, and managing these international relationships strategically is an important component of any comprehensive reform agenda.

The ILO's technical assistance programme, delivered primarily through the Advancing Decent Work Project and associated programmes, has been essential to the institutional development of DIFE, the DoL, and the broader labour administration system. This assistance should be sustained and deepened, with particular attention to the development of data analytics capacity within DIFE, the strengthening of the conciliation and arbitration system within the DoL, and the development of NOSHTRI's research and training capacity.

The EU's GSP framework and the Corporate Sustainability Due Diligence Directive provide important external incentives for labour administration reform, and Bangladesh should engage constructively with the EU's monitoring and assessment processes while advocating for an approach that rewards genuine progress rather than penalizing incomplete compliance. The EU should be encouraged to use its leverage to support the development of effective domestic enforcement capacity rather than simply mandating compliance outcomes that the current institutional framework cannot deliver.

The International Accord for Health and Safety in the Textile and Garment Industry represents a model of private supply chain governance that has made genuine contributions to OSH standards in the RMG sector, and its continued operation alongside the strengthened DIFE inspection system is defensible as a transitional arrangement. But the long-term goal must be the development of domestic public enforcement capacity that is sufficient to sustain the OSH standards achieved through private governance without continued dependence on international brand support, and the transition planning for a post-Accord era should begin now.

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## CHAPTER SIXTEEN: PHILOSOPHICAL SYNTHESIS: LABOUR ADMINISTRATION AS A SITE OF DEMOCRATIC STRUGGLE AND INSTITUTIONAL BECOMING

### 16.1 Labour Administration between Bureaucratic Rationality and Democratic Legitimacy

The analysis developed throughout this Part has moved between different levels of abstraction: the technical details of inspection procedures and digital platforms, the institutional dynamics of DIFE and the Labour Courts, the political economy of the employer lobby and the trade union movement, and the philosophical frameworks of Weber, Habermas, Braithwaite, and republican theory. In this concluding synthesis, these different levels of analysis are brought together in a reflective account of what labour administration is, and what it must become, in Bangladesh.

Labour administration, properly understood, is not a purely technical enterprise of rule application and compliance monitoring. It is a site of democratic struggle, a domain in which fundamental questions about the distribution of power, the protection of rights, and the meaning of citizenship are contested and, to some degree, resolved through institutional processes. When a DIFE inspector decides whether to issue a compliance notice or to accept an informal assurance of future compliance, when a DoL conciliator decides whose version of the facts to credit in a dispute over a dismissed trade union organizer, when a Labour Court judge decides whether to prioritize the employer's arguments or the worker's account, each of these decisions is simultaneously a technical legal decision and a political choice about whose interests and whose voice the state will protect.

The quality of labour administration, therefore, is not merely a matter of technical efficiency or institutional capacity. It is a matter of democratic legitimacy and political justice. An administration that is technically efficient in processing inspection forms while systematically failing to enforce the rights of the most vulnerable workers is not merely inefficient: it is unjust, and its injustice is a democratic failure as well as an institutional one. An administration that responds primarily to the pressures of the international development community and international buyers, while remaining unresponsive to the voices of domestic workers and their organizations, is failing the test of democratic accountability even if it is meeting the targets of international monitoring frameworks.

This democratic framing of labour administration provides a normative foundation for the reform agenda that is more robust than the purely technical or efficiency-based framings that often dominate the institutional design literature. The goal of reform is not merely to make the administration more efficient, in the sense of processing more inspections with fewer resources, but to make it more democratic, in the sense of more responsive to the rights and interests of workers and more accountable to the constituencies it is supposed to serve.

## 16.2 The Capabilities Approach and the Institutional Design of Labour Administration

Martha Nussbaum's capabilities approach, introduced in earlier parts of this textbook, provides a particularly illuminating framework for thinking about the design of labour administration institutions. The capabilities approach holds that the fundamental goal of just institutions is to support the development and exercise of the central human capabilities: the capabilities for bodily health and bodily integrity, for emotional development and affiliation, for practical reason and play, for political participation and control over one's environment. Applied to labour administration, the capabilities approach suggests that the test of institutional performance is not whether inspections are conducted, licenses are processed, and cases are decided according to the

formal procedures, but whether workers' central capabilities are actually supported and protected through the institutional processes.

This capability-centred assessment of labour administration yields a different set of priorities from those produced by a compliance-centred assessment. A compliance-centred assessment focuses on whether the legal rules are being followed. A capability-centred assessment focuses on whether workers are actually able to work in conditions of safety and dignity, to exercise their rights of association and collective bargaining, to access effective remedies when their rights are violated, and to participate in the governance of the institutions that regulate their working lives. These two assessments often point in the same direction, but not always: a technically compliant inspection system that is not delivering meaningful improvement in workers' capability to live safe, healthy, and autonomous working lives is, from a capabilities perspective, failing despite its formal compliance.

The capabilities approach also has important implications for the question of who should be the ultimate judges of whether labour administration is performing adequately. Formal compliance assessment is necessarily done by those with the institutional authority and technical expertise to assess it: the ILO, international buyers, government performance management systems. But capability assessment must ultimately be done by the workers whose capabilities are at stake: are they actually safer? Are they actually better able to exercise their rights? Are they actually more secure in their working lives? This suggests that workers' voices and perspectives must be central to the evaluation of labour administration performance, and that evaluation systems that rely exclusively on official data and formal compliance metrics are structurally biased toward underestimating the gap between formal law and social reality.

### 16.3 The July Revolution and the Political Sociology of Labour Administration Reform

The July Revolution of 2024 provides the immediate historical context for the reforms analyzed throughout this Part, and it deserves reflection as a political-sociological phenomenon that illuminates the dynamics of labour law reform in Bangladesh. The revolution was not primarily a labour movement revolution: it was a student-led uprising against an authoritarian government, driven by grievances about corruption, nepotism, and the erosion of democratic institutions. But it drew upon and was joined by the labour movement, and it created a political opening that the labour movement and its allies have sought to use to advance the agenda of labour law reform.

The convergence of student and worker mobilization in the July Revolution reflects a broader phenomenon that political sociologists have analyzed as the coalitional dynamics of reform in emerging democracies. Reformist coalitions are most likely to succeed when they are able to bring together different constituencies with different but compatible interests: students and workers, urban professionals and rural peasants, civil society organizations and trade unions, domestic reformers and international advocates. The July Revolution temporarily created such a coalition, and the reform agenda that emerged from it reflects the interests and priorities of a diverse range of actors.

The sustainability of the reform coalition depends on whether its constituent elements can maintain their organizational capacity and political engagement through the difficult period of

implementation. Student movements are notoriously difficult to sustain after the moment of revolutionary mobilization. The trade union movement, weakened by decades of political fragmentation and employer suppression, faces the challenge of using the new legal framework created by the November 2025 Amendment to build genuine organizational power at the enterprise level. Civil society organizations, while energized by the post-revolution moment, face the resource constraints and political pressures that limit the effectiveness of civil society in any context.

The durability of the 2024-2025 reforms will ultimately depend on whether they contribute to a structural shift in the balance of power in Bangladesh's labour governance, one that gives workers greater organizational capacity and political voice, reduces the structural advantages of employers in regulatory processes, and creates institutional mechanisms that are more genuinely accountable to workers' interests and less susceptible to employer capture. This structural shift is not guaranteed by the formal legal reforms, however comprehensive. It requires sustained political engagement, organizational development, and institutional building over a period of years and decades.

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## CONCLUDING REMARKS ON PART TWELVE

Part Twelve has offered a comprehensive, theoretically grounded, historically informed, and empirically engaged analysis of the institutional architecture of labour law enforcement in Bangladesh. The analysis has moved through multiple layers of institutional life: the constitutional and statutory foundations of the Ministry of Labour and Employment; the organizational structure, capacity, and endemic corruption of DIFE; the dispute resolution functions of the Department of Labour; the backlog crisis and access to justice problems of the Labour Courts; the OSH administration framework from Rana Plaza to the International Accord; the parallel jurisdiction of EPZ labour regulation; the Labour Reform Commission of 2024-2025 and its political significance; the promises and limitations of digital governance through LIMA; the social partners and the infrastructure of collective labour relations; the administrative law dimensions of labour administration; and the social protection infrastructure within which labour administration is embedded.

The central conclusion of Part Twelve is that Bangladesh's labour administration faces a deep and structural crisis that is not primarily a technical or managerial problem but a political and economic one. The formal institutional framework, while considerably strengthened by the November 2025 Amendment Ordinance and the various reform initiatives of the 2014-2025 period, continues to fall far short of effective enforcement for the vast majority of workers, particularly those in the informal economy, in domestic service, in agriculture, and in small and medium enterprises outside the international supply chains that attract external monitoring attention.

Closing the gap between formal law and social reality requires not merely more inspectors, more efficient processes, or more detailed legal provisions, important as all of these are. It requires a fundamental shift in the political economy of labour administration, in which workers are

organizationally stronger, employers are institutionally more accountable, and the state's enforcement apparatus is genuinely insulated from the political pressures and corrupt incentives that currently compromise its independence and effectiveness. The Labour Reform Commission's recommendations, the November 2025 Amendment, the ILO engagement framework, and the post-revolution political opening all provide resources for this structural shift, but they cannot substitute for the sustained political engagement that genuine transformation requires.

The July Revolution of 2024 opened a window. Whether that window leads to a room of genuine institutional transformation or closes before the view changes fundamentally is a question that the workers, trade unionists, civil society activists, lawyers, judges, academics, and administrators of Bangladesh are in the process of answering, through the daily practice of asserting rights, enforcing standards, adjudicating disputes, and demanding accountability that constitutes the living reality of labour administration. This textbook is offered as a contribution to that ongoing process of collective deliberation and institutional becoming.

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## BIBLIOGRAPHICAL NOTE AND FURTHER READING FOR PART TWELVE

The literature on labour administration, regulatory theory, and institutional design is extensive. The following sources are recommended for further study, organized thematically.

On the theory of labour administration and regulation, foundational texts include: Ian Ayres and John Braithwaite, "Responsive Regulation: Transcending the Deregulation Debate" (1992); John Braithwaite and Peter Drahos, "Global Business Regulation" (2000); David Weil, "The Fissured Workplace" (2014); Cynthia Estlund, "Regoverning the Workplace" (2010); and Bronwen Morgan and Karen Yeung, "An Introduction to Law and Regulation" (2007). Hugh Collins's "Regulating Contracts" (1999) and "Employment Law" (2010) provide important treatments of the relationship between regulatory theory and labour law.

On ILO standards for labour administration, essential primary sources include: ILO Convention No. 81 (Labour Inspection, 1947); ILO Convention No. 150 (Labour Administration, 1978); ILO Convention No. 155 (Occupational Safety and Health, 1981); ILO Convention No. 187 (Promotional Framework for OSH, 2006); and ILO Convention No. 190 (Violence and Harassment, 2019). The ILO's comprehensive assessment of Bangladesh's labour inspection system (2020) provides the most detailed available analysis of DIFE's strengths and weaknesses.

On Bangladesh's labour administration specifically, key sources include: the successive iterations of Bangladesh's National Action Plan on the Labour Sector submitted to the ILO Governing Body (most recent version, May 2025); the Labour Reform Commission Report, "The Transformation Framework of the World of Work" (April 2025); the Bangladesh Labour Act (Amendment) Ordinance 2025 (November 17, 2025); the BD Law Digest analysis of the 2025 Amendment (March 2026); and the annual labour market profiles published by the Danish Trade Union Development Agency for Bangladesh.

On the sociology and political economy of labour administration, important works include: Erik Olin Wright, "Envisioning Real Utopias" (2010); Mushtaq Khan, "State Formation in Palestine" (2004) and associated work on limited access orders; and the body of scholarship on regulatory capture associated with George Stigler, Sam Peltzman, and their successors.

On digital governance and regulatory technology, recent work includes: Bert-Jaap Koops, "The Concept of Function Creep" (2021) in Law, Innovation and Technology; Antoinette Rouvroy and Thomas Berns, "Gouvernementalite algorithmique et perspectives d'emancipation" (2013); and the growing literature on algorithmic accountability and digital labour platforms referenced in Part Seven of this textbook.

On the philosophical foundations of labour administration, the key texts are: Martha Nussbaum, "Creating Capabilities" (2011); Philip Pettit, "Republicanism: A Theory of Freedom and Government" (1997); Alan Bogg, "The Democratic Aspects of Trade Union Recognition" (2009); and the body of work on communicative rationality and deliberative democracy associated with Jurgen Habermas, particularly "Between Facts and Norms" (1996).

*End of Part Twelve*

*Part Thirteen will examine the Political Economy of Labour Law Reform in Bangladesh, building upon the institutional analysis of this Part to provide a comprehensive account of the political forces, ideological conflicts, and structural determinants that have shaped and will continue to shape the trajectory of labour law reform in one of the world's most important garment-producing nations.*

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## PART THIRTEEN: THE POLITICAL ECONOMY OF LABOUR LAW REFORM IN BANGLADESH

## CHAPTER ONE: THEORETICAL FRAMEWORKS FOR UNDERSTANDING THE POLITICAL ECONOMY OF LABOUR LAW REFORM

### 1.1 The Concept of Political Economy in Legal Analysis

The phrase political economy, which dominated serious intellectual discourse from Adam Smith and David Ricardo through to Karl Marx, John Stuart Mill, and Alfred Marshall before being displaced in the late nineteenth century by the more narrowly technical vocabulary of academic economics, has returned in the early twenty-first century with renewed force and urgency. Its return reflects a growing recognition, across disciplines, that the phenomena studied by economists, lawyers, political scientists, and sociologists cannot be adequately understood when they are artificially separated from one another. The economy is not a self-regulating mechanism that operates according to its own internal laws, independent of political power and legal structure. Law is not a neutral framework of rules that applies equally to all persons and all interests, independent of the social and economic forces that shape its content. Politics is not a domain of pure principle and public interest, insulated from the pressures of organized interests

and structural power. These three domains are, in reality, deeply and inseparably intertwined, and any serious analysis of any one of them must attend to its constitutive relationships with the others.

This insight is central to the project of Part Thirteen. The political economy of labour law reform in Bangladesh is not simply a story about legal texts, parliamentary procedures, or administrative decisions. It is a story about the intersection of class power, economic structure, state organization, global capital flows, international institutions, ideological conflict, and democratic aspiration. It is a story in which the formal legal process of amendment and reform is merely the visible surface of much deeper processes of social contestation, institutional struggle, and political transformation. To understand why Bangladesh's labour law looks the way it does, why it has been reformed in the ways it has been reformed, and why certain dimensions of reform have proven far more difficult to achieve than others, one must attend to the political economy of the reform process and the structural forces that shape it.

The political economy of labour law reform is a well-developed field of scholarly inquiry, though it has been applied unevenly across different national contexts, with far more attention given to the advanced industrial economies of Europe and North America than to the developing economies of South and Southeast Asia. The foundational theoretical frameworks for this inquiry were developed by scholars working in several distinct intellectual traditions, which must be briefly surveyed before they can be applied to the Bangladeshi context.

The first tradition is the varieties of capitalism literature, associated with the work of Peter Hall and David Soskice and developed in numerous subsequent contributions. This tradition argues that national economies are organized around distinct institutional complementarities that shape the incentives and strategies of firms, workers, and states, and that these institutional configurations have systematic consequences for labour market outcomes, including the content and enforcement of labour law. The contrast between liberal market economies, exemplified by the United States and the United Kingdom, and coordinated market economies, exemplified by Germany and the Scandinavian countries, has been the central organizing framework of this literature. Liberal market economies tend toward decentralized, voluntarist labour relations, low union density, flexible employment practices, and relatively weak statutory protections. Coordinated market economies tend toward centralized collective bargaining, high union density, long-term employment relationships, and strong statutory protections. This contrast reflects not merely political choice but deeper institutional complementarities between financial systems, corporate governance structures, vocational training systems, and labour relations institutions.

The varieties of capitalism framework has been extensively criticized for its Eurocentrism, its static character, its neglect of the internal heterogeneity of national economic institutions, and its tendency to treat existing institutional configurations as stable equilibria rather than contested and evolving social arrangements. These criticisms are well-founded, and the framework requires significant modification before it can be applied to Bangladesh. Nevertheless, the fundamental insight that labour law cannot be understood in isolation from the broader institutional context in which it is embedded remains important and is directly relevant to the analysis of Bangladesh's labour law reform process.

The second tradition is the power resources approach to comparative political economy, associated with Walter Korpi, Gosta Esping-Andersen, Jonas Pontusson, and their collaborators. This tradition argues that the content and scope of labour market regulation and social protection is primarily determined by the relative power resources of labour and capital in the political arena. Where labour is organizationally strong, politically unified, and effectively represented in state institutions, labour law tends to be more protective of workers' interests. Where capital is organizationally dominant, politically well-connected, and effectively captures state institutions, labour law tends to reflect capital's preferences for flexibility, minimal labour costs, and weak enforcement. The power resources approach has been influential in explaining the development of the welfare state in Western Europe, and it has been extended to developing country contexts by scholars such as Teri Caraway, Matthew Lange, and Crina Viju-Miljusevic.

Applied to Bangladesh, the power resources approach predicts what is empirically observable: a labour law framework that has historically been highly protective on paper but systematically under-enforced in practice, reflecting the dominance of employer interests in the political economy of the regulatory state and the organizational weakness of the labour movement. The reforms of 2024-2025 represent a partial shift in the power resources balance, driven by the collapse of the Hasina regime, the mobilization of the July Revolution, and the creation of an interim government more responsive to labour reform advocates. Whether this shift is sustainable depends ultimately on whether the structural power resources of labour relative to capital can be significantly and durably altered.

The third tradition is the historical institutionalism associated with scholars such as Kathleen Thelen, Paul Pierson, and Wolfgang Streeck. Historical institutionalists argue that institutional change is path-dependent: the institutions that exist at any given moment have been shaped by prior institutional choices, and these prior choices constrain and channel the possibilities of subsequent change. Institutions are not merely the product of present-day power relations and interests; they embody and reflect the power relations and interests of previous historical periods, and they continue to shape outcomes even as the underlying power relations change. The concept of layering, by which new institutional elements are added on top of existing structures rather than replacing them, and the concept of conversion, by which existing institutional forms are redirected toward new purposes as the result of political contestation, are particularly relevant to understanding the dynamics of labour law reform in Bangladesh.

Historical institutionalism helps explain one of the central puzzles of Bangladeshi labour law: the persistence of colonial-era legal structures and organizational forms long after the political context that produced them has changed. The basic architecture of Bangladesh's labour administration, including the separation between the formal factory sector and the rest of the economy, the centrality of inspection-based enforcement, the tripartite structure of national-level consultative bodies, and the primacy of the industrial court system for dispute resolution, reflects institutional choices made in British India and preserved through the processes of Pakistani state-building and Bangladeshi independence. These institutional legacies shape and constrain the possibilities of contemporary reform in ways that must be explicitly analyzed.

The fourth theoretical framework relevant to understanding the political economy of labour law reform in Bangladesh is that of regulatory capture and rent-seeking, associated with the public

choice tradition in economics and political science. George Stigler's seminal 1971 paper on the theory of economic regulation argued that regulatory agencies tend to be captured by the industries they are supposed to regulate, because industry interests are concentrated, well-organized, and have strong incentives to invest in political influence, while the beneficiaries of effective regulation are dispersed, poorly organized, and face significant collective action problems. Sam Peltzman extended this analysis to show how regulatory outcomes tend to reflect the balance of political influence between different interest groups rather than any coherent public interest standard.

The regulatory capture framework has obvious relevance to Bangladesh's labour administration, which has been extensively documented as subject to systematic capture by employer interests. The corruption of factory inspectors, the political influence of the BGMEA and BKMEA over labour regulatory processes, the tendency of tripartite consultation processes to reflect employer preferences at the expense of worker interests, and the pattern of non-enforcement of legally mandated standards are all consistent with a regulatory capture analysis. Understanding the mechanisms of this capture, and identifying the institutional reforms that might reduce its pervasiveness, is a central task of this Part.

### 1.2 The State Autonomy Debate and Its Relevance to Bangladesh

One of the foundational debates in political sociology concerns the degree to which the state acts as an autonomous agent with its own interests and capacities, as opposed to serving merely as an arena in which social forces compete or as an instrument through which dominant class interests are expressed. Theda Skocpol's classical contribution to this debate, in States and Social Revolutions and subsequently in Protecting Soldiers and Mothers, argued that states have organizational interests and capacities of their own that are not reducible to the interests of any social class, and that state autonomy is a real and significant determinant of political outcomes, particularly in periods of crisis and reorganization.

The Bangladeshi state presents a complex and internally differentiated picture with respect to state autonomy. The Ministry of Labour and Employment, the Department of Inspection for Factories and Establishments, and the Labour Courts are formal state institutions with their own organizational cultures, career incentives, and professional identities. These institutions do not simply act as agents of the employer class, even though employer interests have been highly influential in shaping their behaviour and the broader framework of labour law. There are bureaucrats, inspectors, judges, and civil servants within these institutions who are genuinely committed to the protection of workers' rights and the effective enforcement of labour law, and who experience the gap between formal law and social reality as a professional and ethical problem rather than merely as a technical challenge.

At the same time, the organizational capacity of the Bangladeshi state in the domain of labour administration is severely constrained by resource deficits, structural weaknesses, and the political economy of bureaucratic incentives. DIFE operates with a staff-to-establishment ratio that makes effective inspection physically impossible even if all inspectors were fully dedicated and corruption-free. The Labour Courts suffer from a backlog of cases that renders timely adjudication impossible under current institutional arrangements. The Department of Labour's

conciliation and arbitration services operate with resources and expertise wholly inadequate to the scale of the dispute resolution challenge it faces.

These institutional weaknesses are not accidental. They reflect decades of deliberate under-resourcing of labour administration functions by governments that were more responsive to employer interests than to worker interests, and that understood effective labour enforcement as a threat to the investment climate and export competitiveness that the ruling political economy prioritized above all else. The underfunding of DIFE, the underpayment of inspectors, the inadequate staffing of the Labour Courts: these are not merely administrative failures but political choices, choices that reflect the structural dominance of employer interests in the political economy of the developmental state in Bangladesh.

The Labour Reform Commission established in November 2024 and its April 2025 report represent an important but partial shift in this political economy. The Commission's mandate and composition reflected the post-July Revolution political context, in which the delegitimization of the Hasina regime created an opening for reformers who had previously been marginalized. But the Commission's recommendations, however progressive in their orientation, do not automatically translate into political reality. The forces that have historically determined the content and enforcement of Bangladesh's labour law, the organized interests of the employer class, the political incentives of the legislative and executive branches, the institutional constraints of the bureaucratic apparatus, and the structural position of Bangladesh in the global garment supply chain, continue to operate, and they have not fundamentally changed as a result of the July Revolution, whatever the political rhetoric of the interim government might suggest.

### 1.3 Structural Power in the Labour Market: The Concept and Its Applications

Erik Olin Wright's analysis of structural, associational, and societal power provides a particularly illuminating framework for understanding the constraints on labour law reform in Bangladesh. Wright distinguished between the structural power that accrues to workers from their position in the economic structure, particularly their capacity to disrupt production through strikes and work stoppages, the associational power that accrues to workers from their collective organization in trade unions and other forms of worker organization, and the societal power that accrues to workers from their alliances with other social actors, including students, civil society organizations, religious institutions, and political parties.

In Bangladesh, workers' structural power is paradoxically both high and low. On the one hand, the concentration of the ready-made garments industry in the Dhaka metropolitan area and its surrounding industrial zones means that strategic work stoppages in major factories or industrial areas can have significant economic consequences for factory owners, brands, and exporters. The disruptive capacity of RMG workers has been demonstrated repeatedly, from the wage strikes of 2006 to the unrest of 2010, 2013, and 2023. On the other hand, the structural power of individual workers in the context of Bangladesh's labour market is severely constrained by the massive surplus of unskilled labour, the ease with which workers can be replaced, and the legal and practical barriers to effective collective action.

Workers' associational power in Bangladesh is chronically weak, as documented extensively in earlier parts of this textbook. The legacy of political fragmentation of the trade union movement, the legal barriers to union formation that prevailed until the 2025 amendment, the systematic use of anti-union violence and dismissal by employers, and the political capture of the major union federations by the principal political parties have combined to produce a situation in which effective collective bargaining coverage in the formal private sector is negligible by international comparison. This weakness of associational power is a fundamental constraint on the political economy of labour law reform, because the political mobilization of workers for legal reform requires organizational capacity that the trade union movement, in its current state, struggles to provide.

Workers' societal power has been the most dynamic dimension of labour power in Bangladesh's recent political history. The July Revolution of 2024 represented a moment of maximum societal power, when the labour movement's interests temporarily converged with those of the student movement, the civil society organizations, and the urban middle class in their shared opposition to the Hasina regime. This convergence created a political opportunity for labour law reform that is without parallel in Bangladesh's post-independence history. But societal power coalitions are inherently unstable and temporary, and the question of whether the labour movement can convert the temporary societal power of the revolutionary moment into durable organizational and associational power is one of the central challenges of the post-revolution period.

Beverly Silver's analysis of the cycles of labour unrest in the global economy, developed in Forces of Labor and extended in subsequent work, provides a complementary perspective. Silver argues that labour militancy tends to emerge in response to both the expansion of large-scale capitalist production in new regions and the crises of established production systems, and that the history of global capitalism is characterized by recurring cycles in which labour movements in different regions wax and wane in accordance with the shifting geography of capital accumulation. The development of the RMG sector in Bangladesh represents precisely the kind of large-scale expansion of labour-intensive capitalist production that Silver identifies as a generator of labour militancy, and the cycles of unrest, reform, and renewed contestation that have characterized Bangladeshi labour relations over the past four decades are consistent with her theoretical framework.

## CHAPTER TWO: THE STRUCTURAL DETERMINANTS OF LABOUR MARKET GOVERNANCE IN BANGLADESH

### 2.1 The Demographic and Labour Market Context

Bangladesh is a country of approximately 170 million people, with a workforce estimated at approximately 75 million persons. The labour force participation rate, at roughly 58 percent overall, masks enormous variation by gender: male labour force participation is approximately 80 percent, while female labour force participation, which has been rising significantly in recent decades due largely to the expansion of the RMG sector, stands at approximately 36 percent. The age structure of the population is heavily weighted toward youth: approximately 30 percent of the population is under 15 years of age, and the proportion of the population in the working-age cohort of 15 to 64 years has been growing steadily as the demographic transition proceeds. This

demographic profile creates both an opportunity, the so-called demographic dividend that can generate rapid economic growth when a large working-age population is productively employed, and a challenge, since the economy must generate sufficient employment to absorb the approximately 2 million young people who enter the labour market each year.

The structural composition of the Bangladeshi labour market is characterized by three dominant features that have profound implications for labour law and its reform. The first is the overwhelming predominance of informal employment, with estimates suggesting that between 84 and 87 percent of total employment is informal in character, meaning that workers are employed without formal contracts, without coverage by the principal provisions of the Bangladesh Labour Act, 2006, and without access to the basic social protection mechanisms, including contributory social insurance, that are associated with formal employment in most developed economies. The second is the concentration of formal employment in a small number of export-oriented sectors, most importantly the ready-made garments sector, which accounts for the overwhelming majority of formal private sector employment and for approximately 80 percent of Bangladesh's total export earnings. The third is the enormous diversity of employment forms across different sectors and regions, from the plantation workers of the tea gardens of Sylhet, whose conditions of employment are governed by a separate and even less protective legal framework, to the self-employed vendors and hawkers of Dhaka's street economy, who have no formal legal protection at all.

The implications of this labour market structure for the political economy of labour law reform are profound and frequently underappreciated. Labour law reform in Bangladesh, however ambitious and comprehensive in its formal scope, is primarily addressed to the formal sector, and most importantly to the export-oriented manufacturing sector, because these are the sectors that attract international attention, generate significant export revenues, and are subject to the commercial pressures from international buyers that create the principal external incentives for reform. The vast majority of Bangladeshi workers, those employed in the informal economy, in domestic service, in agriculture, in street trading, and in the myriad forms of casual and precarious work that constitute the lived reality of most working-class Bangladeshis, are effectively outside the reach of the formal labour law framework.

This asymmetry between the formal scope of labour law and its effective domain of application creates a political economy in which the costs and benefits of labour law reform are distributed very unevenly across different groups of workers. The formal sector workers who benefit most directly from improved enforcement of the Bangladesh Labour Act are a relatively small fraction of the total workforce. The informal sector workers who constitute the majority of the workforce are largely untouched by formal labour law reform, and their interests are frequently neglected in the political calculations that determine the pace and content of reform. This neglect is not merely a technical or administrative failure; it reflects a deeper political economy in which the interests of informal workers are poorly represented in the institutions through which labour law is made and reformed.

### 2.2 The Export-Oriented Industrial Development Model and Its Labour Implications

Bangladesh's development trajectory since independence has been shaped decisively by the adoption of an export-oriented industrialization strategy, and most specifically by the extraordinary growth of the ready-made garments sector, which emerged from very modest origins in the late 1970s and early 1980s to become the dominant force in Bangladesh's industrial economy and the primary driver of its export earnings. The political economy of this development model has profound implications for labour law and its reform.

The RMG sector's competitive advantage in global markets has rested, from its earliest years, primarily on the availability of cheap and disciplined female labour. The wages paid to RMG workers in Bangladesh have consistently been among the lowest in the world for comparable types of production, and this wage advantage has been the primary basis of Bangladesh's competitive position in the global fast fashion supply chain. This structural reality creates a fundamental tension in the political economy of labour law reform: any reform that significantly increases labour costs in the RMG sector risks reducing Bangladesh's competitive advantage and potentially triggering a reallocation of orders to lower-cost competitors, most notably Ethiopia, Myanmar, Cambodia, and increasingly Vietnam. The threat of order diversion has been consistently deployed by the employer class as an argument against protective labour legislation and enforcement, and it has been remarkably effective in constraining the ambitions of reform advocates.

The economist Dani Rodrik's analysis of the political trilemma of the world economy is directly relevant here. Rodrik argues that the simultaneous pursuit of deep economic integration, national sovereignty over economic policy, and democratic politics is impossible: one of the three must be sacrificed. In the Bangladeshi context, the requirements of deep integration into global garment supply chains, which demand wage competitiveness and labour flexibility, are in tension with the requirements of democratic politics, which generates pressure for improved labour standards and stronger worker protection. The resolution of this tension in Bangladesh has historically favored economic integration over democratic accountability in the domain of labour relations, with the state intervening primarily to maintain the conditions of capital accumulation rather than to protect workers' rights.

The 2025 Labour Act amendment and the Bangladesh Labour (Amendment) Bill 2026, which enacted the 2025 Ordinance into permanent legislation, represent a partial and contested departure from this historical pattern. The shift is partial because the reforms, while significant, do not fundamentally challenge the low-wage, labour-intensive development model that has been the foundation of Bangladesh's export success. The shift is contested because the employer associations, most notably the BGMEA and the BKMEA, have mounted significant resistance to specific provisions of the reform package, particularly those relating to trade union formation and collective bargaining rights, arguing that they threaten the competitive foundation of the garment industry and the broader developmental project of export-led growth.

The BKMEA's response to the November 2025 amendment is illustrative. In a press conference following the Ordinance's promulgation, BKMEA President Mohammad Hatem argued that the reform package's provisions on union formation thresholds were not fully reflective of decisions made in the Tripartite Consultative Council, and warned that instability from higher production costs and administrative burdens could threaten Bangladesh's position as the world's second-

largest clothing exporter. This response reflects the classic pattern of employer resistance to labour law reform in export-dependent economies: the competitive threat narrative, the tripartite process narrative, and the investment climate narrative are deployed simultaneously to create a coalition of economic and political pressure against reform advocates.

The economic analysis of this resistance requires careful engagement. The argument that labour cost increases threaten competitive advantage is not without empirical foundation: Bangladesh does compete in a global market in which price is a major determinant of buyer sourcing decisions, and significant increases in labour costs, if not matched by corresponding productivity gains, would reduce profitability and potentially trigger order diversion. But the argument systematically overstates the labour cost elasticity of buyer sourcing decisions, which are also influenced by quality, reliability, lead times, compliance records, and supply chain relationships. The analysis by the Financial Express in January 2026 is instructive: it points out that the reforms should be understood as an investment in market access, since maintaining GSP-plus status after Bangladesh's graduation from least-developed-country status in 2026 requires compliance with international labour standards, and that the cost of losing EU preferential access would far exceed the cost of the labour standard improvements required to maintain it.

### 2.3 Segmented Labour Markets and the Politics of Stratified Protection

One of the most important structural features of Bangladesh's labour market for understanding the political economy of labour law reform is the profound segmentation of the labour market along multiple dimensions simultaneously: formal and informal, export-oriented and domestically-oriented, urban and rural, male and female, skilled and unskilled. This segmentation has important political economy consequences because it creates divergent interests among different categories of workers and makes it difficult to build the broad-based political coalitions that are necessary to achieve comprehensive labour law reform.

The formal export sector worker, employed in an air-conditioned RMG factory in the Ashulia industrial zone, with a formal contract, access to the provident fund and welfare committee mechanisms established by the Bangladesh Labour Act, and exposure to the compliance monitoring systems of international brands and the Bangladesh Accord, has fundamentally different interests and a fundamentally different political economy position from the domestic worker employed informally in a private household in Gulshan, the agricultural labourer working on a seasonal contract in Rajshahi, the rickshaw puller operating in the informal economy of Chittagong, or the brick kiln worker employed under a system of debt bondage in the char areas of the Jamuna River. The formal garment worker has benefited, however incompletely, from the international attention given to the RMG sector, from the external pressure of the international compliance monitoring framework, and from the formal union structures, however weak, that the Bangladesh Labour Act provides for. The informal worker has benefited from none of these things.

Michael Piore's classic analysis of dual labour markets, developed in Internal Labor Markets and Manpower Analysis and extended in numerous subsequent contributions, provides a theoretical framework for understanding this segmentation. Piore argued that labour markets in advanced capitalist economies tend to divide into a primary sector, characterized by stable employment,

good wages, and access to internal labour market opportunities, and a secondary sector, characterized by unstable employment, low wages, and no access to the benefits of the primary market. The political economy consequences of this segmentation, in Piore's analysis, are that workers in the secondary sector are effectively excluded from the coalitions that produce labour market regulation in the primary sector, because their interests and organizational capacities are too weak to make them effective political actors.

In Bangladesh, the relevant segmentation is not simply the dual labour market of advanced industrial economies but a far more complex multi-tiered structure in which the export-oriented formal sector sits at the top of a hierarchy of increasingly informal and unprotected employment arrangements. The political economy of labour law reform in Bangladesh has historically been determined primarily by the intersection of employer interests and international supply chain pressures in this top tier, with the vast majority of workers in the middle and lower tiers of the labour market hierarchy effectively excluded from the processes through which labour law is made and enforced.

The Labour Reform Commission of 2024-2025 recognized this structural problem explicitly in its April 2025 report, which included recommendations for extending legal protection to domestic workers, agricultural workers, informal sector workers, and other categories currently excluded from the Bangladesh Labour Act's scope. But the political economy of reform implementation is deeply unfavorable to these extensions of coverage, because the interests of informal workers are poorly organized, poorly represented in formal political processes, and face no effective external pressure analogous to the international supply chain and trade preference pressures that have driven reform in the formal sector.

## CHAPTER THREE: THE EMPLOYER CLASS, CAPITAL, AND THE POLITICS OF LABOUR LAW RESISTANCE

### 3.1 The Structure of the Bangladeshi Employer Class

The employer class in Bangladesh is not monolithic. It encompasses a heterogeneous range of actors with different interests, different political connections, and different relationships to the labour law reform process. Understanding this internal differentiation is essential to any accurate political economy analysis of employer opposition to labour law reform.

At the apex of the employer hierarchy in the formal manufacturing sector are the large export-oriented garment manufacturers, organized primarily through the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA). These associations represent the major enterprises that have benefited most from the export-oriented development strategy, that have the strongest connections to international buyers and global supply chains, and that exercise the greatest political influence over labour law and its enforcement. The BGMEA, in particular, has historically occupied a quasi-governmental position in Bangladesh's political economy, with its leadership having direct access to the highest levels of executive power and its institutional preferences carrying enormous weight in the legislative and regulatory process.

Below the apex manufacturers in the formal sector are the medium and smaller garment enterprises, subcontractors, and suppliers to the major factories. These enterprises are less politically well-connected, more financially precarious, and more directly exposed to the labour cost pressures that arise from any tightening of labour standards. Their interests are represented by the same employer associations as the major manufacturers, but their relationship to the reform process is more complex: they are more likely to be directly affected by any increase in minimum wages or labour compliance costs, and they are also more likely to engage in the most egregious forms of labour rights violations, simply because they have less financial and reputational incentive to comply voluntarily.

Outside the formal manufacturing sector, there is a much larger and even more politically heterogeneous universe of employers in the informal economy: small traders, workshop owners, construction contractors, domestic service employers, transport operators, agricultural landowners, and the myriad other forms of enterprise that constitute the bulk of Bangladesh's economic activity. The interests of these informal sector employers in the labour law reform process are poorly organized and poorly articulated, but they are nonetheless real and significant. Any expansion of the formal labour law framework to cover informal employment would impose compliance costs on this vast and politically diverse group of employers, and their potential resistance is an important constraint on the political economy of comprehensive labour law reform.

The agrarian employer class, consisting primarily of large landowners, sharecropping landlords, and agricultural capitalists in the more commercialized farming regions, has historically been one of the most politically powerful social groups in Bangladesh, with deep connections to the major political parties and strong representation in the National Parliament. The interests of this class in maintaining extremely cheap and unregulated agricultural labour are directly threatened by any extension of formal labour law coverage to agricultural workers, and the consistent exclusion of agricultural workers from the Bangladesh Labour Act's main provisions reflects, in part, the political power of this agrarian employer class.

### 3.2 The BGMEA as a Political Institution

The BGMEA deserves extended analysis as a political institution rather than merely as a trade association, because its role in the political economy of Bangladesh's labour law system has been far more than that of an ordinary business lobby. Since its establishment in 1977, the BGMEA has evolved into an organization with quasi-public functions, including the issuance of certificates of origin for garment exports, the management of the Garment Workers' Welfare Fund, the operation of hospitals and educational institutions for workers, and the representation of the garment industry in bilateral and multilateral trade negotiations. This quasi-public role has given the BGMEA a status in Bangladesh's political economy that goes well beyond that of an ordinary employer organization, and has made it one of the most powerful non-state actors in the country's political life.

The BGMEA's political influence over labour law has operated through multiple channels. The most direct channel has been the personal political connections of BGMEA leadership, which has historically included members of both major political parties and has had direct access to

prime ministerial attention. The pattern of BGMEA leaders serving simultaneously as members of parliament, government advisers, and heads of the employer association illustrates the degree to which the boundaries between the employer lobby and the state have been permeable in Bangladesh's political economy. Under the Hasina government, the BGMEA's influence over labour law and its enforcement was particularly extensive, reflecting the close political and financial relationships between the garment industry and the Awami League party apparatus.

The second channel of BGMEA's political influence has been its role in shaping the discourse of national development around the primacy of the garment sector. The narrative that Bangladesh's economic development, poverty reduction, and women's empowerment all depend fundamentally on the maintenance of a globally competitive garment industry, and that labour standard improvements that threaten the industry's competitiveness therefore threaten development itself, has been a powerful ideological resource that the BGMEA has deployed consistently and effectively against labour reform advocates. This narrative has been challenged by labour rights organizations and development economists who argue that genuine development requires, rather than precludes, the improvement of labour standards, but the employer narrative has proven more politically effective, particularly in contexts where the choice has been framed as one between workers' rights and workers' jobs.

The third channel of BGMEA's political influence has been its engagement with international actors, particularly international buyers and the major development partners. The BGMEA has been highly effective at negotiating with international buyers, the ILO, the EU, and the major brand organizations over the terms of the international compliance monitoring frameworks that have been the primary external driver of labour standard improvement in the RMG sector since Rana Plaza. This engagement has allowed the BGMEA to present itself as a responsible corporate actor committed to improving labour standards, while simultaneously opposing specific legal reforms that would give workers the organizational capacity to demand those standards for themselves. The strategic use of voluntary compliance mechanisms to forestall legally mandated rights is a classic employer strategy in the political economy of labour law, and the BGMEA has deployed it with considerable sophistication.

### 3.3 Mechanisms of Employer Resistance to Labour Law Reform

The mechanisms through which the employer class has resisted labour law reform in Bangladesh are multiple and mutually reinforcing. Understanding these mechanisms in detail is essential to developing reform strategies that can overcome them.

The first and most basic mechanism is the simple exercise of political influence through campaign contributions, personal relationships, and the revolving door between industry leadership and political office. The Bangladeshi political economy, like that of many developing countries, is characterized by close personal and financial relationships between leading business figures and the major political parties. These relationships create structural incentives for political leaders to prioritize the interests of the business class in legislative and regulatory decisions, and they have systematically disadvantaged workers' interests in the labour law reform process. The July Revolution of 2024 disrupted this pattern temporarily, by delegitimizing the Hasina government's close relationships with the garment industry and creating space for a

reform agenda more responsive to workers' interests. But the structural conditions that produced the Hasina government's relationship with the employer class, the dependence of political parties on business financing, the personal connections between political leaders and major employers, and the ideological consensus around export-led development, have not been fundamentally altered by the revolution.

The second mechanism is the strategic deployment of economic threat narratives. The argument that labour cost increases will drive orders to competing countries, causing factory closures and mass unemployment, has been the most powerful and most consistently deployed weapon in the employer arsenal against labour law reform. This argument has the advantage of appearing to defend the interests of workers themselves, since it frames labour rights improvements as threats to workers' jobs rather than simply as threats to employer profits. It is an argument that has been taken seriously by development economists and international institutions, who are genuinely concerned about the possibility that premature tightening of labour standards in labour-surplus developing economies could reduce their competitive advantage and slow employment growth.

The empirical evidence for this argument, however, is more equivocal than its rhetorical deployment in the Bangladeshi political debate suggests. The detailed research conducted by economists including Drusilla Brown, Raymond Robertson, and Donna Bates on the relationship between labour standards and trade competitiveness in developing countries finds no consistent negative relationship between labour standard improvements and export performance when other factors are controlled for. The experience of other garment-exporting countries that have improved labour standards, including Cambodia under the ILO Better Factories programme and the Philippines under various compliance initiatives, does not support the prediction that labour standard improvements lead to systematic order diversion. And the Financial Express analysis cited above correctly identifies the medium-term risk: that failure to improve labour standards may cost Bangladesh preferential market access, which would be economically far more damaging than the labour cost increases required to meet international standards.

The third mechanism of employer resistance is the selective engagement with the tripartite consultation process. The formal tripartite structure of labour law making in Bangladesh, which requires the participation of government, employer organizations, and worker organizations in the formulation of labour legislation and policy, provides employer organizations with a legitimate institutional channel through which to influence the content of reform. The BKMEA's complaint after the November 2025 amendment, that the Ordinance did not fully reflect the decisions of the Tripartite Consultative Council, illustrates the way in which employer organizations deploy the tripartite process simultaneously as a mechanism for influencing reform content and as a legitimating argument against reforms that exceed what employer organizations are willing to accept. This use of tripartism as a veto point for employer interests, while structurally disadvantaged worker organizations lack the organizational capacity to make the tripartite process genuinely representative, is one of the most important and most underappreciated features of the political economy of labour law reform in Bangladesh.

The fourth mechanism is the direct suppression of worker organization through anti-union practices at the enterprise level. The Bangladesh Labour Act, even before the 2025 amendment, formally prohibited anti-union discrimination and provided for the registration and recognition of

trade unions. But the practical enforcement of these provisions has been negligible, and employers in the garment industry have routinely engaged in the dismissal of union organizers, the creation of employer-controlled yellow unions designed to crowd out genuine worker organizations, and the use of violence and intimidation against workers attempting to exercise their collective rights. The low density of genuine trade unions in the RMG sector, documented extensively in earlier parts of this textbook, is not a natural feature of Bangladeshi workers' preferences but is the product of systematic anti-union practices that the state has consistently failed to effectively prevent or punish.

The 2026 Amendment's explicit prohibition on blacklisting workers or trade union members and on employers establishing trade unions under their control or providing financial support to influence trade union activities represents a formal legal response to these anti-union practices. Whether the formal prohibition can be made effective through enforcement is the central implementation challenge that Part Fourteen of this textbook, on collective labour law and freedom of association, will examine in depth.

## CHAPTER FOUR: THE TRADE UNION MOVEMENT AS A POLITICAL FORCE IN LABOUR LAW REFORM

### 4.1 The Structure and Fragmentation of Bangladeshi Trade Unionism

The Bangladesh trade union movement is one of the most fragmented and politically divided in the developing world. As noted in earlier parts of this textbook, approximately 10,000 trade unions are formally registered under the Bangladesh Labour Act and the Bangladesh Export Processing Zones Labour Act, but the vast majority of these registered unions are either dormant, politically captured by political party affiliates, or controlled by employer-friendly leadership. The number of genuinely active and independent trade unions representing the interests of workers in collective bargaining is estimated at fewer than 100 across the entire formal sector, and the number possessing genuine collective bargaining authority is significantly smaller.

This fragmentation has deep historical roots. The trade union movement of East Pakistan, from which Bangladesh's current movement descends, was characterized from its earliest years by close ties to the political parties, particularly the Awami League and the various left parties that competed for working-class support. These political affiliations served initially to protect unions from state repression and to connect the labour movement to broader struggles for democracy and national liberation, but they also subjected union leadership to the priorities of political party strategy rather than the independent organizational interests of workers. The pattern of political affiliation has persisted through Bangladesh's independence to the present day, with the major union federations affiliated to the Awami League (Jatiya Sramik League and its successor organizations), the Bangladesh Nationalist Party (Jatiyatabadi Sramik Dal), the Jamaat-e-Islami (Sramik Kalyan Federation), and various left parties.

This political fragmentation creates a structural problem for the exercise of workers' associational power in the labour law reform process. When the major union federations are primarily loyal to political parties rather than to workers' independent organizational interests, their positions on labour law reform tend to reflect the political interests of their party patrons

rather than a coherent analysis of workers' needs. Under the Hasina government, the major Awami League-affiliated unions were reluctant to push aggressively for labour law reforms that would embarrass the government or create friction with the garment industry, whose political support the Awami League valued highly. The July Revolution, by removing the Hasina government and creating a political context in which the Awami League's political patronage networks were disrupted, has potentially created space for a more genuinely worker-centered trade unionism, but the organizational infrastructure of that kind of unionism is not yet adequately developed.

### 4.2 The Impact of the 2025 Amendment on Union Formation and its Political Significance

The modification of the trade union formation threshold in the November 2025 Ordinance, from the requirement that 20 percent of a factory's total workforce support the formation of a union, to a sliding scale based on absolute numbers that allows unions to be formed with as few as 20 workers in enterprises of up to 300 employees, represents one of the most significant formal changes in the legal conditions for worker organization since the Bangladesh Labour Act was enacted in 2006. Understanding the political economy significance of this change requires attention to both the formal legal change and the practical conditions that will determine whether it leads to genuine improvements in workers' associational capacity.

The previous threshold of 20 percent of the workforce was widely criticized by international labour rights bodies, trade unions, and development organizations as an unreasonably high barrier to union formation, particularly in the large garment factories that employ thousands of workers. In a factory employing 3,000 workers, the old threshold required 600 workers to sign a union formation petition, a requirement that created enormous opportunities for employer intimidation of organizers and made it essentially impossible to form a union without the employer's passive or active acquiescence. The new sliding scale, which requires only 20 workers in small enterprises and scales up to 400 workers for enterprises employing more than 3,000, dramatically reduces this barrier and brings Bangladesh's union formation requirements more in line with international practice.

The political economy of this reform is complex. From the perspective of power resources theory, the lowering of union formation thresholds, if it leads to a significant increase in genuine union density in the RMG sector and other formal sector industries, would represent a meaningful shift in the associational power of workers relative to employers. A more densely unionized garment sector would have greater capacity for collective bargaining, greater capacity for monitoring and enforcing legal rights, and greater political influence in the processes through which labour law is made and enforced. This potential shift in associational power is precisely why the employer associations have reacted to the reform with such concern, and why the BKMEA's opposition has been so vocal.

From the perspective of historical institutionalism, however, the formal change in union formation thresholds does not automatically produce the substantive change in union density and effectiveness that reformers hope for. The obstacles to effective worker organization in the Bangladeshi RMG sector are not solely legal; they are organizational, cultural, economic, and political. Workers who attempt to form unions under the new threshold will still face the risk of

anti-union dismissal, still face the challenge of organizing workers who are afraid to join unions because of the very real economic consequences of unemployment in a labour-surplus economy, and still face the political economy constraint that employer organizations will use every available mechanism to prevent the formation of genuinely independent and effective unions.

The Bangladesh Labour (Amendment) Bill 2026's provisions on anti-union discrimination, including the prohibition on blacklisting workers or union members and the prohibition on employer-controlled trade unions, represent formal legal responses to these structural obstacles. But the political economy of enforcement is as important as the content of the formal legal provisions. If DIFE inspectors continue to be underfunded, poorly trained, and susceptible to employer pressure, the new anti-union discrimination provisions will be as ineffective in practice as the previous provisions were. If the Labour Courts continue to operate with a massive backlog that means discrimination cases take years to reach resolution, the deterrent effect of the legal prohibitions on anti-union practices will be negligible.

### 4.3 NGO Labor Activism and the Politics of International Advocacy

Alongside the formal trade union movement, Bangladesh has a vibrant civil society sector engaged in labour rights advocacy, much of it organized through non-governmental organizations with international connections and funding. Organizations such as the Bangladesh Centre for Worker Solidarity, Karmojibi Nari, the Bangladesh Institute of Labour Studies, and numerous other groups have played important roles in documenting labour rights violations, training workers in legal rights, providing legal assistance to workers in dispute resolution processes, and advocating for legislative reforms. These organizations have often worked in close collaboration with international labour rights organizations, including the Worker Rights Consortium, the Clean Clothes Campaign, the Fair Labor Association, and the Solidarity Centre, and have been important intermediaries between Bangladeshi workers and the international institutions and brands that exercise significant influence over Bangladesh's labour governance.

The political economy of NGO labour advocacy in Bangladesh is complex and has been the subject of scholarly debate. Naila Kabeer's influential work on the political economy of export production and women's empowerment in Bangladesh argues that the NGO sector has played a genuinely transformative role in supporting women workers' capabilities and organizing capacities, providing resources, information, and solidarity networks that would otherwise be unavailable. But critics from a more structurally oriented political economy perspective argue that NGO labour advocacy, particularly when it is internationally funded and oriented toward international standards compliance, tends to focus on the formal sector, on the internationally visible violations of the major brands' supply chains, and on the individual rights claims of individual workers, rather than on building the kind of broad-based organizational power that could structurally alter the balance of forces in Bangladesh's labour market.

This critique points to a genuine tension in the political economy of labour advocacy in Bangladesh: the tension between the immediate, visible, and internationally legible goal of improving compliance with formal legal standards in the formal sector, and the longer-term, organizationally demanding, and politically contested goal of building a genuinely powerful and independent trade union movement that can effectively represent the interests of all Bangladeshi

workers, formal and informal, in all sectors of the economy. The former goal is more tractable, more measurable, and more amenable to international pressure and NGO-style advocacy. The latter goal is more fundamental, more politically threatening to employer interests, and more difficult to achieve without the kind of sustained, broad-based organizing work that requires organizational resources, political protection, and long time horizons that neither international NGOs nor domestically funded civil society organizations currently possess.

## CHAPTER FIVE: THE STATE, THE BUREAUCRACY, AND THE POLITICAL ECONOMY OF REGULATORY CAPTURE

### 5.1 The Developmental State Model and Its Limitations in Bangladesh

The developmental state concept, associated with the work of Chalmers Johnson on Japan, Peter Evans on Brazil and South Korea, and Alice Amsden on South Korea and Taiwan, refers to a model of state-led capitalist development in which a cohesive and competent state bureaucracy guides market processes, promotes industrial upgrading, and manages the social tensions generated by rapid economic transformation. The developmental state in this classic formulation is characterized by a pilot agency with administrative authority over economic development, insulated from immediate political pressures, staffed by a meritocratic elite, and oriented toward long-term developmental goals rather than short-term distributional politics.

Bangladesh has sometimes been described as a developmental state in progress, particularly in the context of the remarkable economic growth performance of the past two decades, the successful promotion of the RMG industry as a national export champion, and the significant improvements in social development indicators, particularly those related to primary education, child mortality, and women's health, that have made Bangladesh something of a model for other low-income countries. But the developmental state concept, applied to Bangladesh's labour governance, reveals more that is absent than present.

The classic developmental state achieves its developmental goals through a combination of insulated technocratic authority, selective promotion of strategic industries, and managed suppression of distributional conflicts, including labour conflicts. In the East Asian developmental states, this management of labour involved the systematic suppression of independent trade unionism and the enforcement of labour discipline through a combination of rapid wage growth, paternalistic welfare provision, and authoritarian political control. The legitimacy of this suppression was sustained, at least temporarily, by the demonstrable material improvements in living standards that rapid economic growth generated. Workers in South Korea, Taiwan, and Singapore accepted (or were compelled to accept) restrictions on their collective rights in exchange for rapidly improving wages, extensive social provision, and expanding opportunities for social mobility.

In Bangladesh, the developmental state model has been applied in a severely distorted form. The strategic promotion of the RMG industry has been genuine and remarkably successful in terms of export growth and employment generation. But the paternalistic bargain that gave the East Asian developmental states a degree of legitimacy for their suppression of labour rights has not been maintained: wages in Bangladesh's garment sector have remained extremely low by international

comparison, wage growth has consistently lagged behind inflation, social provision has been minimal, and the improvement in workers' material circumstances has been far less than their contribution to national economic growth would justify. The result has been a developmental state that has successfully suppressed labour rights without delivering the compensating wage and welfare improvements that might have made this suppression politically sustainable.

### 5.2 Regulatory Capture: Mechanisms and Evidence

The concept of regulatory capture, introduced in the theoretical discussion of Chapter One, requires substantive empirical grounding in the specific context of Bangladesh's labour administration. The evidence of systematic employer capture of the labour regulatory apparatus in Bangladesh is extensive, well-documented, and frankly alarming.

The most basic and pervasive mechanism of regulatory capture is the corruption of factory inspection. As documented by the ILO's comprehensive assessment of Bangladesh's labour inspection system and by numerous journalistic investigations and NGO reports, the practice of inspectors accepting payments from factory owners in exchange for favorable inspection reports or for warnings before unannounced inspections is endemic in DIFE's operations. This corruption is not merely a matter of individual misconduct by poorly paid inspectors; it reflects a systemic feature of the political economy of labour enforcement in which the formal salary structures for inspectors are so inadequate that corruption is effectively the only way for inspectors to achieve a middle-class standard of living, and in which the organizational culture of DIFE normalizes rather than penalizes corrupt practices.

The political economy of this corruption is deeply structural. The underpayment of DIFE inspectors is not an accidental feature of Bangladesh's fiscal situation; it reflects a deliberate political choice, embedded in budgetary allocations and compensation structures, to maintain an inspection system that has the formal appearance of enforcement while lacking the practical capacity for effective enforcement. This choice serves the interests of the employer class, which prefers nominal compliance with formal legal requirements to the costs of genuine compliance, and it is sustained by the political influence of employer organizations over the budgetary and regulatory decisions of the Ministry of Labour and Employment.

Beyond corruption in individual inspections, regulatory capture operates through the political influence of employer organizations over the appointment of senior DIFE officials, the setting of inspection priorities, the development of inspection methodologies and compliance standards, and the processes through which penalties are assessed and collected. The revolving door between the garment industry and the regulatory apparatus has been documented in various forms, including the pattern of senior DIFE officials taking post-retirement positions in industry compliance departments and the pattern of industry-sponsored training programmes for DIFE staff.

The structural bias of the tripartite consultation process toward employer interests represents a different form of regulatory capture operating at a higher level of the institutional hierarchy. The tripartite structure formally ensures the participation of both employer and worker representatives in the formulation of labour law and policy. But when worker representation in

the tripartite process is provided by politically affiliated union federations that are more loyal to their party patrons than to workers' independent interests, and when the organizational capacity and technical expertise of worker organizations in the tripartite process is dramatically inferior to that of employer organizations, the formally tripartite process effectively operates as a bilateral negotiation between the government and the employer class, with worker interests systematically underrepresented.

The Labour Reform Commission's composition and process in 2024-2025 represented an explicit attempt to address this structural bias in the tripartite consultation process. The Commission's inclusion of labour rights scholars, civil society representatives, and worker advocates alongside the formal union and employer representatives created a more diverse deliberative body, and the Commission's April 2025 report reflects a more genuinely worker-centered perspective than most previous official reviews of Bangladesh's labour law. But the subsequent legislative process, through which the Commission's recommendations were filtered and transformed into the November 2025 Ordinance and the subsequent 2026 Amendment Bill, reinscribed many of the structural biases of the existing political economy. Employer organizations were more effective than worker organizations in shaping the final content of the legislation, and several of the Commission's most progressive recommendations were either diluted or omitted from the final text.

### 5.3 Administrative Law and the Problem of Accountability in Labour Administration

The accountability of Bangladesh's labour administration apparatus to the workers it is supposed to serve raises fundamental questions of administrative law and constitutional design. The formal legal framework establishes a hierarchy of administrative accountability: DIFE inspectors are accountable to divisional controllers, who are accountable to the Director General of DIFE, who is accountable to the Ministry of Labour and Employment, which is politically accountable to the Council of Ministers and ultimately to the National Parliament. This formal hierarchy of accountability is supplemented by the judicial accountability mechanism of writ jurisdiction in the High Court Division of the Supreme Court, through which administrative decisions of labour officials can be challenged by affected parties.

In practice, this formal accountability structure is much less effective than its formal design suggests. The internal accountability mechanisms within DIFE, from the supervision of inspectors by divisional controllers to the audit of inspection records by senior management, have historically been inadequate to detect and punish systematic corruption and non-enforcement, partly because of resource constraints, partly because of organizational culture, and partly because supervisors and managers within DIFE are subject to the same structural incentives toward corruption and regulatory capture as the inspectors they are supposed to supervise. The political accountability of the Ministry of Labour and Employment to Parliament is a formal rather than substantive accountability mechanism in most contexts, since parliamentary scrutiny of labour administration is episodic, technically shallow, and highly politicized.

The judicial accountability mechanism of writ jurisdiction provides an important but limited corrective. The High Court Division has shown, in several significant decisions, a genuine

commitment to the protection of workers' constitutional rights, including the right of association and the right to trade union recognition. But access to writ jurisdiction requires legal resources and organizational capacity that most individual workers and even most trade unions lack. The high costs of litigation, the delays in the judicial process, and the lack of specialized expertise in labour administration issues among most practitioners and judges at the High Court level mean that writ jurisdiction functions as a reserve power in egregious cases rather than as a routine mechanism of accountability for the day-to-day operations of the labour administration system.

The development of a more effective administrative law framework for labour administration accountability is an important component of any serious reform agenda. The Labour Reform Commission's recommendations on the strengthening of the Labour Court system, including the creation of specialized Labour Appellate Tribunals and the improvement of case management procedures, are relevant here. But beyond the formal judicial mechanisms, there is a need for more robust mechanisms of administrative accountability that are more accessible to workers than judicial review and more systematic in their operation than the episodic interventions of parliamentary scrutiny.

## CHAPTER SIX: GLOBAL CAPITAL, SUPPLY CHAIN GOVERNANCE, AND THE EXTERNALLY DRIVEN REFORM DYNAMIC

### 6.1 The Architecture of Global Garment Supply Chains

The global apparel supply chain is one of the most studied, most contested, and most politically significant supply chains in the global economy. It connects consumers in the wealthy countries of North America, Western Europe, and East Asia to garment workers in Bangladesh, Cambodia, Vietnam, Pakistan, Ethiopia, and numerous other low-income countries through a complex network of brands, retailers, buying houses, agents, first-tier suppliers, second-tier subcontractors, and raw material suppliers. The governance of this chain, in terms of who sets the standards for production conditions, who monitors compliance with those standards, and who bears responsibility when standards are violated, is one of the central issues in the political economy of global labour governance.

Gary Gereffi's global value chain (GVC) framework, which has become the dominant analytical framework for understanding the governance of global supply chains, distinguishes between buyer-driven and producer-driven value chains. Apparel is the paradigmatic buyer-driven chain, in which power is concentrated at the brand and retailer end rather than at the production end: brands such as H&M, Zara, Primark, Walmart, and Gap set the terms of supply, determine the prices they will pay, specify the standards they require, and can switch suppliers with relative ease, while garment manufacturers in Bangladesh and other producing countries compete for contracts on the basis of price, quality, and compliance, with relatively little market power to resist the terms imposed by buyers.

This buyer power in the global apparel chain has ambivalent consequences for labour governance in Bangladesh. On one hand, the concentration of market power at the brand end of the chain gives international consumer campaigns and shareholder activism significant potential leverage over the labour practices of brands' supply chains. The experience of the Campaign for

Clean Clothes, the Worker Rights Consortium, the Rana Plaza Donors Trust Fund, and the Bangladesh Accord demonstrates that sustained international pressure on brands can translate into concrete improvements in supply chain labour practices, particularly when the reputational costs of association with egregious violations are high and the financial costs of compliance improvements are modest relative to brand revenues.

On the other hand, the buyer power structure of the global apparel chain creates systematic incentives for buyers to minimize the prices they pay to garment manufacturers, which in turn creates pressure on manufacturers to minimize their labour costs, which in turn generates pressure against any improvements in wages, benefits, or working conditions that would increase those labour costs. The price squeeze that characterizes many brand-supplier relationships is a structural driver of the low wages and poor conditions that prevail in the global garment industry, and it is a driver that is not adequately addressed by the compliance monitoring frameworks that brands and international institutions have developed in response to Rana Plaza and other disasters.

### 6.2 The International Accord and the Transformation of Private Governance

The International Accord for Health and Safety in the Textile and Garment Industry, which evolved from the Bangladesh Accord on Fire and Building Safety established in the aftermath of the Rana Plaza disaster of April 2013, represents one of the most significant and most studied experiments in private supply chain governance in the history of the global economy. The Accord's central innovation was to make participating brands legally responsible for ensuring that factories in their supply chains meet specified fire and structural safety standards, and to create a governance structure that gave worker representatives (through their union affiliates) genuine co-management authority alongside brand representatives over the implementation and enforcement of safety standards.

The political economy significance of the Accord is difficult to overstate. In a context where the Bangladeshi state's capacity and willingness to enforce occupational health and safety standards had been systematically demonstrated to be inadequate, the Accord created a private governance mechanism that achieved, in the limited domain of fire and structural safety in major RMG facilities, levels of compliance monitoring and remediation that the state's own inspection apparatus could not approach. The Accord's combination of independent engineering inspections, legally binding remediation commitments, and worker representation in governance created a model of supply chain accountability that has been extensively analyzed by labour law scholars, including Ashish Kabra, Sanjay Pinto, and various ILO researchers, and has been cited as a potential model for global supply chain governance more broadly.

But the Accord's achievements must be assessed alongside its limitations, which are equally significant for the political economy of labour governance in Bangladesh. The Accord covered only fire and structural safety in the factories of signatory brands, which represents a small fraction of the total RMG workforce and an even smaller fraction of the total Bangladeshi workforce. It addressed only one dimension of the working conditions crisis in Bangladesh's garment sector, leaving wages, working hours, forced overtime, verbal and physical abuse, the suppression of trade unions, and numerous other violations entirely outside its scope. And it

created a governance mechanism that is dependent on the continued engagement of international brands and the continued operation of the compliance monitoring infrastructure, rather than building the domestic state capacity that would be necessary for sustainable long-term improvement.

The transition from the Bangladesh Accord to the International Accord in 2021, and the subsequent renewal of the International Accord in 2023, demonstrates both the durability and the limitations of this model of private governance. The International Accord has expanded its geographic scope to include garment production in other countries and has developed a more sophisticated governance framework, but it remains fundamentally dependent on the voluntary participation of brands, and the political economy of supply chain governance makes it difficult to prevent brands from sourcing from non-compliant factories when price pressures are intense and monitoring is imperfect.

The July Revolution and the subsequent reform process have opened a new chapter in the relationship between private supply chain governance and domestic labour law reform. The Labour Reform Commission's recommendations explicitly addressed the need to transition from exclusive reliance on private supply chain governance mechanisms to a domestically based system of public enforcement capable of sustaining the standards achieved through private governance, and the November 2025 Ordinance's strengthening of DIFE's mandate and resources represents a step toward this transition. But the organizational and resource gap between the current DIFE and the kind of inspection agency that would be needed to replace the International Accord remains enormous, and the political economy of the transition is complex.

### 6.3 The EU Corporate Sustainability Due Diligence Directive and Bangladesh

The European Union's Corporate Sustainability Due Diligence Directive (CS3D), adopted in 2024 after a lengthy and contested legislative process, represents one of the most significant developments in international supply chain governance in recent years. The Directive imposes legally enforceable obligations on large companies operating in or sourcing from the EU to identify, prevent, mitigate, and account for adverse impacts on human rights and the environment throughout their value chains. For Bangladesh's garment industry, which exports a very large proportion of its output to EU member states, the CS3D has potentially far-reaching consequences for the governance of supply chain labour practices.

The CS3D's provisions on human rights due diligence require companies to conduct systematic assessments of human rights risks throughout their supply chains, to develop and implement action plans to address identified risks, to monitor the effectiveness of these plans, and to report publicly on their due diligence processes and outcomes. Companies that fail to comply with these requirements are subject to civil liability for damages caused by their failure to prevent adverse human rights impacts, as well as administrative penalties. The Directive's civil liability provision is particularly significant, because it potentially creates a legal mechanism through which workers in Bangladesh and other supply chain countries can seek compensation from European brands for harm caused by the brands' failure to exercise adequate due diligence over supply chain labour conditions.

The political economy of the CS3D for Bangladesh's labour law reform process is complex and potentially contradictory. On one hand, the Directive creates powerful external incentives for European brands sourcing from Bangladesh to improve their supply chain compliance practices, which should translate into increased pressure on their Bangladeshi suppliers to improve labour standards. On the other hand, the compliance costs and legal risks associated with the Directive may cause some brands to reduce their sourcing from complex, high-risk supply chains in favor of more geographically concentrated and easily monitored supply chains, potentially reducing order volumes in Bangladesh and undermining the employment base that is the foundation of Bangladesh's export economy.

The Bangladeshi government's response to the CS3D has been strategically ambivalent, acknowledging the legitimacy of the Directive's objectives while expressing concern about its implementation timeline and enforcement mechanisms. Bangladesh's submission to the ILO's 2025 monitoring process argued that the CS3D should be implemented in a way that rewards genuine progress toward improved compliance rather than penalizing imperfect compliance in contexts where institutional capacity constraints limit the pace of improvement. This is a defensible position from the perspective of developmental fairness, but it must not be allowed to become a justification for indefinite delay in implementing the structural reforms that genuine compliance requires.

## CHAPTER SEVEN: THE ILO FRAMEWORK, INTERNATIONAL HUMAN RIGHTS LAW, AND THE ARCHITECTURE OF REFORM CONDITIONALITY

### 7.1 The ILO's Constitutional Architecture and Its Application to Bangladesh

The International Labour Organization, founded in 1919 as part of the Versailles peace settlement, operates on the basis of a unique tripartite constitutional architecture that gives worker and employer representatives, as well as government representatives, formal standing in its governance processes. This constitutional architecture reflects the founders' conviction that labour standards cannot be effectively set or monitored without the active participation of the social partners who are most directly affected by them, and it has made the ILO a distinctive institution in the international system, with a legitimacy in the domain of labour rights that no other international body can claim.

Bangladesh's relationship with the ILO has been central to the recent reform trajectory. The submission of Bangladesh's legal and institutional reform roadmap to the ILO Governing Body in 2021, committing Bangladesh to a specific programme of labour law reforms to be completed by 2026, represented a formal international commitment that has created significant pressure for reform implementation. The roadmap was submitted in response to allegations of violations of ILO Conventions 81 (Labour Inspection), 87 (Freedom of Association), and 98 (Right to Organize and Collective Bargaining), and it committed Bangladesh to specific legislative and institutional changes in each of these domains. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has provided detailed technical assessments of Bangladesh's compliance with these commitments, and these assessments have been important external reference points for the domestic reform debate.

The ILO's March 2025 observation on Bangladesh's compliance report noted that the country had shown strong determination on necessary reforms, acknowledged the progress represented by the November 2025 Ordinance, and called on the government and social partners to pursue tripartite consultations constructively with a view to completing all necessary reforms. This positive assessment, coming from the ILO, was politically important for the reform advocates within the Bangladesh government and civil society, providing international legitimation for the reform trajectory and making it more difficult for employer organizations to claim that the reforms were excessive or incompatible with international standards.

The ILO's approach to Bangladesh has been primarily one of technical assistance and constructive engagement rather than condemnation and punitive pressure, reflecting the organization's institutional preference for gradualist reform through dialogue over confrontational accountability mechanisms. This approach has advantages: it preserves the space for negotiated compromise and incremental progress, and it avoids the risk of triggering a nationalist reaction that could undermine the reform agenda entirely. But it also has disadvantages: it has allowed the pace of reform to be set primarily by the most reluctant actors in the tripartite consultation process, i.e., the employer organizations, and it has provided insufficient pressure for the rapid, comprehensive reforms that the severity of the human rights situation in Bangladesh's labour market arguably requires.

### 7.2 ILO Core Labour Standards and the Fundamental Conventions Framework

The adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998 created a new framework for international labour standards, establishing a small set of core labour standards as fundamental rights binding on all ILO member states regardless of whether they have formally ratified the relevant Conventions. The four categories of fundamental rights identified in the 1998 Declaration are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These categories were expanded in 2022 with the addition of safe and healthy working conditions as a fifth category of fundamental rights, following the adoption of the ILO's 2019 Centenary Declaration.

Bangladesh's ratification of all ten fundamental Conventions (which were previously eight, now expanded following the 2022 recognition of C155 and C187 as fundamental) represents a formal commitment to the entire framework of core labour standards. This formal commitment creates both legal obligations under international law and political commitments that shape the domestic reform agenda. The application of the core labour standards framework to Bangladesh's specific labour law regime reveals a complex pattern of partial compliance, incomplete implementation, and continuing gaps between formal ratification and practical respect.

The most significant compliance gap in the core labour standards framework for Bangladesh relates to freedom of association and the right to collective bargaining, the domain covered by Conventions 87 and 98. Despite the formal ratification of these Conventions, Bangladesh's labour law has historically maintained restrictions on trade union formation that the ILO's supervisory bodies have repeatedly identified as inconsistent with Convention 87, including the

20 percent threshold requirement and the various restrictions on trade union registration in Export Processing Zones. The November 2025 Ordinance's modification of the union formation threshold addresses some but not all of the CEACR's concerns about Bangladesh's compliance with Convention 87, and the implementation of the new framework will be closely monitored by the ILO's supervisory system.

The 2022 addition of safe and healthy working conditions to the framework of fundamental rights gives new political significance to the occupational health and safety dimension of Bangladesh's labour law reform agenda. By elevating OSH to the status of a fundamental right, the ILO framework creates a stronger normative basis for arguing that Bangladesh's chronic failures in factory safety represent not merely regulatory shortcomings but violations of fundamental human rights. This normative reframing has potential significance for the accountability mechanisms available to workers and advocacy organizations in international forums.

### 7.3 The EU GSP Framework and the Political Economy of Trade Conditionality

The European Union's Generalised System of Preferences (GSP) programme provides preferential access to EU markets for exports from developing countries that meet specified criteria, including respect for international labour standards. Bangladesh has historically benefited from the most favorable tier of this programme, the Everything But Arms (EBA) scheme applicable to least developed countries, which provides duty-free, quota-free access to EU markets for all products except arms and ammunition. As Bangladesh is scheduled to graduate from least developed country (LDC) status, the question of how it will maintain preferential EU market access after graduation is one of the most significant challenges in the political economy of Bangladesh's development strategy, and it has significant implications for the labour law reform agenda.

After LDC graduation, Bangladesh will no longer automatically qualify for EBA access and will need to apply for the standard GSP or GSP-plus tiers of EU market access. The GSP-plus tier, which provides the most favorable access among the non-LDC options, requires demonstrating effective implementation of 27 international conventions, including the eight core ILO Conventions on freedom of association, collective bargaining, forced labour, child labour, and non-discrimination. The political economy implication is clear: maintaining preferential EU market access after LDC graduation requires demonstrating genuine compliance with international labour standards, not merely formal ratification of the relevant conventions.

The Financial Express analysis of January 2026, cited earlier, correctly identifies the economic logic of this situation: a 9-12 percent tariff on garment exports to the EU, which would result from losing GSP preferences, would impose costs on Bangladesh's export industry far greater than the labour cost increases required to achieve GSP-plus qualification. This creates a powerful economic argument for labour law reform that does not depend on moral reasoning or international pressure but follows directly from the basic economics of Bangladesh's export dependence. The question is whether this economic logic is sufficiently understood and accepted by the employer class and the political elite to overcome the shorter-term incentives and resistance interests that have historically impeded labour law reform.

# CHAPTER EIGHT: CIVIL SOCIETY, NGOs, AND THE ARCHITECTURE OF LABOUR ADVOCACY

## 8.1 The Civil Society Landscape in Bangladeshi Labour Rights Advocacy

Bangladesh has one of the largest and most active civil society sectors in the developing world, a sector that has its origins in the extraordinary efflorescence of NGO activity that followed independence in 1971 and was sustained by the combination of massive international development assistance, a highly educated urban professional class, and a political culture in which civil society organizations provided services and advocacy that the state was unable or unwilling to provide. The civil society organizations engaged in labour rights advocacy in Bangladesh range from small, worker-led organizations that provide direct legal assistance to individual workers, to major national NGOs with thousands of staff and extensive international connections, to international organizations with offices in Dhaka, to academic institutions engaged in research and policy advocacy.

This civil society landscape has several important features for the political economy of labour law reform. First, it provides organizational infrastructure for labour advocacy that is separate from the trade union movement and the political party affiliates, and therefore potentially more independent in its political orientation. When the trade union federations have been captured by political parties, as they largely were during the Hasina period, civil society organizations provided the organizational space for a more genuinely worker-centered advocacy. The post-July Revolution period has seen significant civil society engagement with the Labour Reform Commission process, the drafting of the November 2025 Ordinance, and the parliamentary process leading to the 2026 Amendment Bill.

Second, the civil society sector provides research and documentation capacity that is essential for evidence-based advocacy. Organizations such as the Bangladesh Institute of Labour Studies, the Centre for Policy Dialogue, and the Research Initiatives Bangladesh have produced important empirical research on labour market conditions, labour law enforcement, wage levels, and the impacts of specific legislative provisions, research that has been used by reform advocates in the policy process and by international bodies in their assessments of Bangladesh's compliance with international standards. This research capacity is a genuine organizational asset for the reform agenda, though it is unevenly distributed across different civil society organizations and is frequently constrained by funding insecurity and political sensitivity.

Third, the civil society sector provides international connectivity that amplifies the domestic advocacy for labour law reform. The connections between Bangladeshi labour rights organizations and international bodies including the Worker Rights Consortium, the Clean Clothes Campaign, the International Trade Union Confederation, and the major international human rights organizations create information flows, political solidarity networks, and reputational pressure mechanisms that supplement the ILO's formal supervisory system and the EU's trade preference conditionality in creating external pressure for reform.

## 8.2 The Limitations of NGO-Based Labour Advocacy

Despite its important contributions, the civil society sector in Bangladesh also has significant structural limitations as a vehicle for labour rights advocacy and labour law reform. The most important of these limitations is the persistent gap between the organizational resources and political effectiveness of civil society organizations and the scale of the challenge they are attempting to address. The labour rights NGO sector in Bangladesh, however vibrant and committed, is dealing with a labour market of approximately 75 million workers, operating across hundreds of thousands of enterprises in dozens of sectors spread across every district of a geographically complex country. The organizational and advocacy capacity of even the most well-resourced labour rights NGOs is entirely disproportionate to this scale of challenge.

The resource dependence of the civil society sector on international funding creates structural constraints on its political effectiveness. Organizations that depend on international donors for their operational budgets are inevitably shaped, to some degree, by the priorities and methodologies of those donors. International funders have their own institutional imperatives and reporting requirements, their own theories of change, and their own political constraints. These external requirements can distort the priorities of civil society organizations in ways that favor the measurable, visible, and internationally legible dimensions of labour rights work, such as individual case advocacy, compliance monitoring, and legislative reform analysis, over the harder, less measurable, and more politically contentious work of building genuine worker organization and associational power.

The political environment for civil society activity in Bangladesh has been frequently hostile, particularly during periods of authoritarian governance. Under the Hasina government, civil society organizations that were too vocal in their criticism of labour conditions or too effective in their support for worker organizing faced the risk of harassment, surveillance, funding restrictions, and in some cases criminal prosecution. The Digital Security Act and its successor legislation were used against journalists and civil society actors who reported on labour rights violations or advocated for labour law reform. This environment of political repression created structural incentives for civil society organizations to adopt less confrontational advocacy strategies, to focus on technical legal analysis rather than political mobilization, and to cultivate relationships with international bodies rather than with domestic workers and their organizations.

The post-July Revolution period has created a more favorable political environment for civil society labour advocacy, but the structural constraints of donor dependence, scale disproportion, and organizational capacity remain significant and must be honestly assessed in any comprehensive political economy analysis of the prospects for labour law reform.

## CHAPTER NINE: THE WAGE QUESTION: MINIMUM WAGES, INFLATION, AND THE POLITICAL ECONOMY OF LABOUR COMPENSATION

### 9.1 The History of Minimum Wage Setting in Bangladesh

The minimum wage for garment workers in Bangladesh has been one of the most politically contentious dimensions of labour law and policy since the RMG sector's rapid expansion in the 1980s. The history of minimum wage setting in Bangladesh is a history of worker mobilization,

employer resistance, state mediation, and international pressure, and it provides one of the clearest windows into the political economy of labour relations in the country.

The Minimum Wages Board, established under the Bangladesh Labour Act, 2006, is the formal institution responsible for determining and revising minimum wages for different industrial sectors. The Board is tripartite in composition, including representatives of government, employers, and workers, but its processes and outcomes have historically been dominated by employer interests and government concerns about export competitiveness, with worker representatives lacking the organizational capacity and technical expertise to advocate effectively for adequate wages.

The political economy of minimum wage setting in Bangladesh has been characterized by a recurring pattern: workers demand substantial wage increases in the context of rising living costs and growing awareness of the wage levels in competing countries; employers resist, citing competitive pressures and investment climate concerns; the government mediates, typically proposing increases that are significantly less than workers demand and more than employers prefer; workers reject the proposed increase and organize strikes and protests; the government and employers make some additional concessions; a settlement is reached that increases the nominal minimum wage but does not fully restore the real wage losses of the previous period; and the cycle begins again.

This pattern was clearly visible in the wage negotiations of 2010, 2013, and 2023. The 2010 wage round followed massive strikes in the Ashulia industrial zone that shut down hundreds of factories, and resulted in a minimum wage increase from Tk. 1,662 to Tk. 3,000 per month. The 2013 round, conducted in the shadow of the Rana Plaza disaster and intense international pressure, resulted in a further increase to Tk. 5,300 per month. The 2023 round, which followed significant unrest in the Ashulia and Mirpur industrial areas in late 2023, resulted in a minimum wage increase to Tk. 12,500 per month, the increase mentioned in various 2025 analyses as the current minimum wage.

Each of these wage increases represented a genuine improvement in nominal terms, but analysis of real wage trends reveals a more sobering picture. Adjusted for inflation, the purchasing power of RMG workers' minimum wages has increased much less than the nominal figures suggest. The ILO's analysis of wage trends in the Bangladeshi garment sector consistently finds that real wage growth has lagged behind both inflation and productivity growth, meaning that workers' share of the value created by the industry has been declining over time. This distributional trend is a fundamental feature of the political economy of Bangladesh's export-oriented development model, and it reflects the structural power imbalance between workers and employers that the formal minimum wage mechanism has proven unable to effectively correct.

### 9.2 Living Wages and the Normative Framework for Adequate Compensation

The concept of the living wage, distinct from the minimum wage, has gained increasing importance in the international discourse on labour standards in global supply chains over the past decade. A living wage is defined as the minimum income necessary for a worker to meet her basic needs, including food, housing, healthcare, education for children, and a small measure of

discretionary income, in the specific regional context where she lives and works. The Anker Research Institute's regional living wage benchmarks for Bangladesh, published in various years, consistently show that the current minimum wage in the garment sector falls significantly below the calculated living wage benchmark for the Dhaka metropolitan area.

The normative significance of the living wage concept for Bangladesh's labour law reform agenda is substantial. If the fundamental purpose of the minimum wage is to ensure that workers can meet their basic needs and maintain a dignified standard of living, then a minimum wage that falls below the living wage benchmark is, in normative terms, an inadequate minimum wage, regardless of whether it represents an improvement over previous minimum wages or exceeds the minimum wages of competing countries. The Bangladesh Labour Reform Commission's April 2025 report explicitly embraced the living wage concept as a normative standard for minimum wage policy, recommending that the wage-setting process be redesigned to target the achievement of a living wage for all workers covered by the minimum wage legislation.

The political economy of implementing a living wage policy in Bangladesh is formidable. The employer class resistance to any significant increase in minimum wages is well-organized and politically powerful. The international buyers' pressure on manufacturer prices creates structural barriers to wage increases that cannot be overcome by domestic policy alone. The absence of industry-level collective bargaining frameworks, which in other countries have been the mechanism through which living wages have been negotiated and implemented, means that wage levels in the Bangladeshi garment sector continue to be determined primarily through the political process of minimum wage setting rather than through genuine collective bargaining.

The Arndt-Corden Department of Economics researchers, in a 2024 working paper on wages and industrial development in South Asia, have argued that the transition to a living wage framework in Bangladesh's garment sector is economically feasible and potentially beneficial for productivity and quality upgrading, but requires simultaneous action on multiple fronts: domestic wage policy, international brand pricing practices, government investment in productivity-enhancing technology and training, and social protection systems that can provide security for workers during industry adjustment. This kind of comprehensive, coordinated policy approach is precisely what the current fragmented, politically contested, and institutionally inadequate labour governance framework in Bangladesh is least well-suited to deliver.

### 9.3 Wage Theft, Delayed Payment, and the Political Economy of Non-Compliance

Beyond the formal question of minimum wage levels, the practice of wage theft through deliberate delay or non-payment of wages represents one of the most pervasive and economically significant violations of labour rights in Bangladesh. The Bangladesh Labour Act, 2006, as amended, specifies strict requirements for the timely payment of wages, including the requirement that wages be paid within a specified number of days after the end of the wage period. Despite these formal requirements, delayed payment and non-payment of wages are documented as routine practices in many sectors, particularly in subcontracting chains below the major export factories, in domestic work, in construction, in the informal retail sector, and in agriculture.

Wage theft has a specific political economy. The practice of delaying wage payments provides employers with a form of interest-free credit from their workers, and in contexts where workers are unwilling or unable to enforce their legal rights through formal mechanisms, this credit can be effectively permanent. The formal legal mechanisms for recovering unpaid wages, including the Labour Court system and the complaint mechanisms within the Department of Labour, are so slow, costly, and uncertain that they are effectively inaccessible to most workers in most circumstances. The practical alternative of collective action through strikes, which has historically been the most effective mechanism for forcing payment of delayed wages, is legally restricted and exposed to employer retaliation.

The digitalization of wage payment, which the ILO and various development partners have promoted as a mechanism for reducing wage theft through the creation of electronic records that are more difficult to manipulate than paper records, has made some progress in the formal RMG sector but has not been systematically implemented across the broader economy. The resistance of some employers to digital wage payment systems reflects, in part, the value they derive from the opacity and informality of cash wage payment systems that make wage theft harder to document and enforce against.

## CHAPTER TEN: THE INFORMAL ECONOMY AND THE POLITICAL ECONOMY OF EXCLUSION FROM LABOUR LAW

### 10.1 The Theoretical Problem of Informality in Labour Law

The informal economy, defined in the ILO's framework as employment that lacks the legal protections and social benefits associated with formal employment, is not a marginal or transitional phenomenon in Bangladesh but is the normal condition of the majority of the workforce. As noted above, approximately 84 to 87 percent of total employment in Bangladesh is informal, and this figure has not significantly declined over the decades of rapid economic growth that have transformed Bangladesh from one of the world's poorest countries to a lower-middle-income country. Understanding the political economy of this persistent informality is essential to any serious analysis of the challenges of labour law reform.

The theoretical literature on informality in developing countries has evolved significantly over the past two decades, moving away from the earlier dual economy models associated with W. Arthur Lewis and beyond the Hernando de Soto-inspired framework that attributed informality primarily to regulatory barriers and legal exclusion. Contemporary political economy analyses of informality, associated with scholars such as Alejandro Portes, Manuel Castells, Francoise Carré, and Judy Fudge, emphasize the way in which informality is not simply a residual category of workers who have not yet been incorporated into the formal economy, but a structural feature of capitalist labour markets that serves specific economic and political functions.

From a political economy perspective, informality functions primarily as a mechanism for allowing capital to externalize the costs of labour reproduction, including wages adequate for subsistence, social protection, occupational health and safety, and secure employment, onto workers themselves, their families, and the broader community. Informal workers are, in effect, subsidizing the formal economy by absorbing the full costs of their labour reproduction while

receiving wages that do not fully cover these costs. This subsidization is made possible by the absence of formal legal protections, by the inability of informal workers to exercise collective rights, and by the availability of social support networks, particularly family and community, that provide a minimum safety net without any employer contribution.

The political economy of labour law reform must grapple directly with this structural function of informality, rather than treating informal workers simply as an excluded category waiting to be incorporated into the formal legal framework. The question of how to provide meaningful legal protection to informal workers without creating the formal compliance costs that employers argue would simply push more employment into less regulated forms is one of the most difficult design challenges in labour law reform, and it is a challenge that the Bangladesh Labour Reform Commission's 2025 recommendations address only partially and tentatively.

### 10.2 Domestic Workers: A Case Study in Legal Exclusion

The case of domestic workers provides one of the most striking illustrations of the political economy of exclusion from formal labour law protection. Bangladesh has an estimated 2 to 4 million domestic workers, the vast majority of whom are women and girls, many of whom are migrants from rural areas, and many of whom are employed under conditions of extreme vulnerability including live-in arrangements that blur the boundaries between working time and personal time, inadequate wages, physical and verbal abuse, and in the worst cases, conditions approaching forced labour.

Domestic workers were explicitly excluded from the main provisions of the Bangladesh Labour Act, 2006, a deliberate political choice that reflected both the practical difficulties of regulating employment in private households and the power of the employing class, which in Bangladesh includes the professional urban middle class that provides the social base for the political parties and the civil service, to protect its access to cheap and flexible domestic labour from the implications of formal labour law protection.

The Labour Reform Commission's April 2025 report recommended the extension of at least minimum legal protections to domestic workers, including the right to a written employment agreement, minimum wage protections, protection from physical and verbal abuse, and access to complaint mechanisms. This recommendation reflects genuine progress in the normative framework and has been supported by international bodies including the ILO, which has promoted the ratification of ILO Convention 189 on Decent Work for Domestic Workers. Bangladesh has not yet ratified Convention 189, and the political economy of ratification is complicated by the domestic political power of the employing class of domestic workers.

ILO Convention 189, adopted in 2011, requires ratifying states to ensure that domestic workers enjoy conditions not less favorable than those applicable to workers generally with respect to normal hours of work, overtime compensation, periods of daily and weekly rest, paid annual leave, sick leave, maternity leave, and social security. The Convention also requires protections against abuse, harassment, and violence, and the right to form or join organizations of their own choosing. The Convention has been ratified by 36 countries as of 2026, primarily in Latin America and Western Europe, and its principles have been reflected in domestic legislation in

numerous other countries. Bangladesh's failure to ratify Convention 189 is a significant gap in its international labour standards commitment, and its extension of any meaningful legal protection to domestic workers remains one of the most important pending items on the labour law reform agenda.

### 10.3 Agricultural Workers and the Tea Garden System

Agricultural workers, including the approximately 85,000 permanent workers and seasonal labourers in the tea gardens of the Sylhet and Chittagong Hill Tracts divisions, represent another major category of workers whose legal protection falls far below the standards that the Bangladesh Labour Act establishes for the manufacturing sector. The Bangladesh Labour Act does apply to the tea industry in formal terms, but the specific conditions prevailing in the tea gardens, including the inherited system of housing, social control, and labour relations that dates to the colonial-era plantation system, create a de facto regime of employment that differs profoundly from the formal labour law framework.

The tea garden workers are among the poorest and most vulnerable workers in Bangladesh, with wages that have historically been even lower than the RMG minimum wage, with extremely limited freedom of movement given their physical dependence on the plantation for housing and services, with restricted access to education and healthcare relative to the general population, and with a trade union movement that, while formally established and legally recognized, operates in an environment of plantation management power that severely constrains its practical effectiveness. The recent introduction of a wage board for tea garden workers, with recommendations implemented in phases since 2023, represents genuine progress, but the poverty and vulnerability of tea garden workers remains extreme by any reasonable standard.

The political economy of tea garden labour governance is shaped by the specific market structure of the tea industry, in which a small number of large plantation companies exercise oligopolistic control over production and export, and the specific historical legacy of the colonial plantation system, which created social and physical arrangements that have proven remarkably resistant to reform. The Bangladesh Tea Association, which represents the major plantation companies, exercises significant political influence over the institutions responsible for setting and enforcing labour standards in the tea sector, and this influence has consistently been deployed to resist any reform that would significantly increase the wage bill or reduce the managerial flexibility that the plantation system provides.

## CHAPTER ELEVEN: GENDER, CLASS, AND THE POLITICAL ECONOMY OF WOMEN WORKERS IN BANGLADESH

### 11.1 The Feminization of Export Labour and Its Political Economy

The story of women's participation in Bangladesh's export-oriented manufacturing sector is one of the most significant social transformations of the late twentieth and early twenty-first centuries. Before the expansion of the RMG sector in the late 1970s and 1980s, women's formal labour force participation in Bangladesh was extremely low, constrained by a combination of purdah norms that restricted women's movement and public presence, limited educational

attainment, the absence of suitable employment opportunities, and deeply patriarchal family structures that assigned women exclusively to the domestic sphere. The rapid expansion of the garment industry, which actively recruited young rural women into its factory workforce, transformed this situation dramatically and with profound consequences for gender relations, women's economic autonomy, and the social organization of Bangladeshi society.

The recruitment of women into the garment industry was not motivated primarily by a concern for women's empowerment. It reflected, rather, the garment industry's preference for cheap, docile, and easily managed labour, and the specific gendered assumptions of international buyers and domestic manufacturers that women workers, particularly young rural migrant women, were less likely to organize, more accepting of low wages and poor conditions, and more amenable to the intense supervision and the flexible working arrangements that the fast fashion supply chain demands. The feminization of garment labour was, from the perspective of the industry's political economy, a strategy of labour cost minimization that happened to generate significant gender-progressive externalities in terms of women's increased economic independence and social mobility.

Naila Kabeer's foundational research on this phenomenon, published in Reversed Realities and subsequent work, documented the complex and contradictory experiences of women garment workers, who simultaneously reported significant improvements in their economic autonomy and social status as a result of their wage income, and continued to experience exploitation, abuse, and gender discrimination in their working lives. Kabeer's analysis challenged both the uncritical celebration of export industrialization as women's empowerment and the equally uncritical condemnation of it as simply exploitation, arguing instead for a nuanced assessment that took seriously both the genuine benefits of economic inclusion and the genuine costs of exploitative working conditions.

### 11.2 The Gender Pay Gap and Legal Frameworks for Equal Pay

The Bangladesh Labour Act, 2006, as amended in 2013, formally prohibits discrimination on grounds of sex in wage payment, but the gender pay gap in Bangladesh's labour market remains substantial and is poorly addressed by the formal legal framework. The 2025 Labour Law reform's explicit ban on gender-based wage inequality, mentioned in the OSHAssociation analysis of the 2025 reforms, represents a strengthening of the formal legal commitment, but the political economy of enforcement is the crucial question.

The gender pay gap in Bangladesh's labour market operates through multiple mechanisms, not all of which are directly addressed by anti-discrimination provisions in the Labour Act. The most basic mechanism is occupational segregation: women are concentrated in specific occupations, most notably sewing in the garment sector, that are designated as low-skilled and compensated at lower rates, while men dominate the higher-paid occupations of cutting, finishing, and supervisory roles within the same factories. This occupational segregation is partly a product of deliberate employer policy, which uses gender stereotypes to justify different compensation scales, and partly a product of social norms that shape women's occupational choices and men's acceptance of supervisory authority.

The formal legal prohibition on gender-based wage discrimination addresses the most overt form of unequal pay, i.e., paying women less than men for literally the same work. But it does not directly address the occupational segregation that produces lower average wages for women through the channel of concentration in low-paid occupational categories. Addressing this deeper dimension of the gender pay gap requires not merely anti-discrimination enforcement but proactive measures to promote women's access to higher-paid occupations, to challenge the gendered wage hierarchies that systematically undervalue the skills performed predominantly by women, and to recognize and compensate the specific physical and cognitive demands of the predominantly female occupations.

The concept of comparable worth, associated with feminist labour economists such as Barbara Bergmann, Elaine Sorensen, and Paula England, provides a theoretical framework for addressing gendered occupational wage hierarchies. Comparable worth analysis evaluates different jobs on the basis of the skill, effort, responsibility, and working conditions they require, and argues that jobs of equal worth on these dimensions should receive equal compensation regardless of the sex composition of the workers who perform them. Implementing comparable worth principles in Bangladesh's labour law framework would require the development of job evaluation methodologies that are free from gender bias, institutional mechanisms for comparing wages across occupational categories, and enforcement mechanisms capable of addressing systematic wage inequalities rooted in occupational segregation rather than direct discrimination.

### 11.3 Maternity Rights, Care Work, and the Reproduction of Labour Power

The legal framework for maternity rights in Bangladesh has been significantly strengthened by the 2025 reforms, which extended maternity leave from four months to six months with full pay. This improvement represents genuine progress toward international standards, which the ILO's Maternity Protection Convention (No. 183) specifies as a minimum of 14 weeks of paid maternity leave. The extension to six months partially meets the more ambitious standard recommended by the ILO's guidance on breastfeeding, which suggests that maternity leave should ideally cover the period of recommended exclusive breastfeeding.

But the formal improvement in maternity leave entitlements must be assessed against the political economy of their implementation. The provision of paid maternity leave imposes direct costs on employers, and these costs create incentives for employers to avoid hiring women of childbearing age, to terminate pregnant workers before they can claim maternity benefits, and to structure employment arrangements in ways that avoid triggering maternity benefit obligations. The evidence from Bangladesh and comparable economies suggests that improved maternity leave entitlements, without corresponding enforcement mechanisms and anti-discrimination protections, can paradoxically worsen women's employment outcomes by increasing the cost and therefore the employer incentive to discriminate against them.

The broader political economy of care work is relevant here. The gendered division of care work, which assigns the primary responsibility for childcare, eldercare, and domestic labour to women, represents a systematic disadvantage in the labour market that formal maternity leave provisions only partially address. Women who are expected to bear the primary burden of unpaid care work face structural constraints on their ability to work full-time, to take on demanding roles, to

organize collectively, and to advance in occupational hierarchies that formal anti-discrimination law alone cannot remove. The Labour Reform Commission's recommendations on workplace childcare facilities for enterprises above a certain size represent a recognition of this structural constraint, but the political economy of implementing these recommendations against employer resistance to additional compliance costs is challenging.

## CHAPTER TWELVE: THE JULY REVOLUTION, POST-AUTHORITARIAN POLITICS, AND THE OPENING OF LABOUR LAW REFORM

### 12.1 The Political Sociology of the July Revolution

The student-led uprising that toppled the government of Prime Minister Sheikh Hasina in August 2024, bringing to an end fifteen years of Awami League governance, was one of the most consequential political events in Bangladesh's post-independence history. Understanding its causes, its dynamics, and its consequences for the political economy of labour law reform requires attention to both the immediate triggers and the deeper structural conditions that made the revolutionary mobilization possible.

The immediate trigger of the July Revolution was the reinstatement of the 30 percent quota system for public sector employment reserved for descendants of freedom fighters, which the Supreme Court had previously struck down and which was restored by an Appellate Division ruling in June 2024. This quota system was widely perceived, particularly among students and young educated people who faced fierce competition for the limited public sector jobs available, as a mechanism for distributing patronage to Awami League supporters and their families rather than for recognizing genuine merit or addressing structural disadvantages. The protest movement that emerged initially demanded reform of the quota system, but rapidly escalated into a broader political challenge to the Hasina government itself, driven by accumulated grievances about corruption, repression, electoral fraud, and the erosion of democratic institutions.

The specific role of workers and the labour movement in the July Revolution was significant but secondary to the student-led mobilization. Garment workers in the major industrial zones of Ashulia, Gazipur, and Mirpur joined the protests in substantial numbers, and the general strike that accompanied the final days of the revolutionary crisis drew heavily on the organizational networks of the informal trade union movement and the labour rights NGO sector. The labour movement's participation in the July Revolution reflected the accumulated grievances of garment workers, including wage stagnation, harassment of union organizers, the impunity of employers who violated labour law, and the close political connections between the Hasina government and the garment industry lobby that had prevented meaningful labour law reform.

The political sociology of the July Revolution is important for assessing the durability of the reform momentum it created. Theda Skocpol's classical comparative historical analysis of revolutions emphasizes the importance of state breakdown, elite defection, and popular mobilization as the three structural conditions that produce revolutionary outcomes. All three were present in Bangladesh in 2024: the Hasina government's institutional legitimacy had collapsed under the weight of accumulated repression and corruption; significant elements of the business and professional elites had withdrawn their support from the government; and a broad

coalition of students, workers, and urban middle-class citizens had mobilized for political change. But Skocpol's analysis also emphasizes that revolutions are shaped as much by the institutional legacies they inherit from the old regime as by the aspirations of the revolutionaries, and this insight is directly relevant to the assessment of the reforms that followed the July Revolution.

## 12.2 The Interim Government and the Labour Reform Commission

The interim government that assumed power following the July Revolution, under the leadership of Muhammad Yunus, was constituted under the interim government provisions of the Constitution of Bangladesh and was responsible for managing the transition to new elections while undertaking urgent reform measures in several domains, including labour law. The Labour Reform Commission, established by the interim government in November 2024 under the chairmanship of professor Syed Sultan Uddin Ahmed, was the institutional mechanism through which the interim government engaged with the labour law reform agenda.

The Commission's composition reflected the more pluralistic political environment of the interim period, including academic labour law specialists, civil society representatives, representatives of major worker organizations, and representatives of employer associations. The Commission's mandate was comprehensive, covering all aspects of the Bangladesh Labour Act, 2006, the Bangladesh Export Processing Zones Labour Act, the Employment of Labour (Standing Orders) Act, and the associated regulatory framework. The Commission was given a relatively short timeframe of six months to produce its recommendations, reflecting the political imperative of moving quickly in the window of political opportunity created by the July Revolution.

The Commission's April 2025 report, titled "The Transformation Framework of the World of Work," was a comprehensive and ambitious document that reflected the more progressive political possibilities of the post-revolution moment. Its recommendations included: the lowering of trade union formation thresholds to a sliding scale based on absolute numbers; the explicit prohibition of anti-union discrimination practices; the extension of legal protection to domestic workers, agricultural workers, and other informal categories; the establishment of a living wage framework for minimum wage determination; the strengthening of DIFE's institutional capacity and independence; the reform of the Labour Court system to address the backlog crisis; the creation of a national social protection system for informal workers; and numerous other specific reforms.

The political process through which these recommendations were transformed into the November 2025 Ordinance and subsequently into the Bangladesh Labour (Amendment) Bill 2026 inevitably involved significant compromises and dilutions. The employer associations, while formally excluded from the reform process during the revolutionary moment, regained significant influence over the legislative drafting process, particularly through their connections with the Ministry of Finance and the Ministry of Commerce, which exercised pressure on the Ministry of Labour and Employment to moderate the most employer-costly provisions of the Commission's recommendations. The BKMEA's public opposition to the November 2025 Ordinance, and its claims that the Ordinance failed to reflect tripartite consensus, illustrated both

the limits of the employer associations' ability to prevent reform and their continued capacity to shape its content.

### 12.3 The November 2025 Ordinance: Content, Politics, and Significance

The Bangladesh Labour (Amendment) Ordinance, 2025, promulgated on November 17, 2025, by the President on the recommendation of the interim government's Advisers Council, was a comprehensive legislative instrument that introduced significant changes to the Bangladesh Labour Act, 2006, across multiple dimensions. The Ordinance was subsequently enacted into permanent legislation through the Bangladesh Labour (Amendment) Bill 2026, passed by the National Parliament in April 2026.

The key provisions of the Ordinance, as enacted, include the following substantive reforms. On trade union formation, the amendment replaced the 20 percent workforce threshold with a sliding scale based on absolute numbers: enterprises of up to 300 workers require a minimum of 20 workers to form a union; enterprises of 301 to 500 workers require a minimum of 40 workers; and enterprises of more than 3,000 workers require a minimum of 400 workers. This reform directly addresses one of the most persistent structural barriers to worker organization in the RMG sector and in other large manufacturing enterprises.

On anti-union discrimination, the amendment introduced explicit prohibitions on blacklisting workers or trade union members, on employers establishing trade unions under their control, and on employers providing financial or other support to influence trade union activities. The amendment also strengthened the penalties for unfair labour practices under Sections 294 and 295 of the Act, increasing the expected legal cost of anti-union behaviour for employers.

On wage calculation, Section 14 of the Act was amended to define continuous service as 240 days in 12 months or 120 days in six months, and to include the last monthly wages and allowances in the calculation of compensation for layoff, retrenchment, and dismissal. This amendment addresses a longstanding controversy about the appropriate basis for calculating statutory compensation payments, and it increases the financial obligations of employers in relation to workforce reductions.

On maternity rights, the amendment extended maternity leave from four months to six months with full pay, bringing Bangladesh's formal maternity leave standard closer to international recommendations. On gender equality in wages, the amendment introduced explicit language prohibiting gender-based wage inequality, strengthening the formal anti-discrimination framework in this area.

On occupational health and safety, the amendment strengthened the provisions on employer obligations for workplace safety, introduced more detailed requirements for risk assessment and hazard identification, and increased the penalties for OSH violations. It also created new provisions on workplace anti-harassment committees and procedures, reflecting the recommendations of the ILO's Violence and Harassment Convention (No. 190), which Bangladesh has not yet ratified.

The political economy assessment of the November 2025 Ordinance requires attention to what it achieved and what it left unaddressed. The reforms on trade union formation, anti-union discrimination, and maternity rights represent genuine progress and bring Bangladesh's formal legal framework somewhat closer to international standards. The strengthening of OSH and anti-harassment provisions addresses some of the most visible and internationally salient dimensions of the working conditions crisis. But the Ordinance did not extend formal labour law coverage to domestic workers, agricultural workers, or informal sector workers, despite the Labour Reform Commission's recommendations to this effect. It did not create a national social protection system for informal workers. It did not fundamentally reform the wage-setting mechanism to target a living wage. And it did not address the deep institutional weaknesses of the enforcement apparatus that mean the gap between formal law and social reality will persist regardless of the formal content of the amended Act.

## CHAPTER THIRTEEN: THE BANGLADESH LABOUR (AMENDMENT) BILL 2026 AND ITS CONSTITUTIONAL SIGNIFICANCE

### 13.1 The Legislative Process and Constitutional Architecture

The passage of the Bangladesh Labour (Amendment) Bill 2026 by the National Parliament in April 2026, enacting the November 2025 Ordinance into permanent legislation with some modifications, was a constitutionally significant event in Bangladesh's labour law history. Understanding its constitutional significance requires attention to the constitutional architecture governing the relationship between ordinance-making power and parliamentary legislation in Bangladesh's constitutional system.

Article 93 of the Constitution of Bangladesh, 1972, grants the President the power to promulgate ordinances during periods when the National Parliament is not in session, provided that the President is satisfied that circumstances exist that render it necessary to take immediate action. An ordinance so promulgated has the same force as an Act of Parliament, but it must be laid before the Parliament at its next session and ceases to operate after the session unless it is approved by the Parliament. The November 2025 Ordinance was issued by the President on the advice of the interim government's Advisers Council, which exercised executive authority in the period between the July Revolution and the election of a new Parliament. The constitutional status of this ordinance-making authority in the context of an interim government, rather than a regularly elected government, is a matter of some constitutional debate, but the Supreme Court declined to invalidate the Ordinance on this ground, and the subsequent parliamentary enactment of the 2026 Amendment Bill resolved any remaining constitutional uncertainty.

The parliamentary process leading to the enactment of the 2026 Amendment Bill was notable for the degree of public contestation it generated, both in Parliament and outside it. The BKMEA's continued public opposition to specific provisions of the Ordinance, particularly those on trade union formation thresholds and anti-union discrimination penalties, generated significant parliamentary debate, and the Labour and Employment Minister's decision to move the bill with some modifications from the original Ordinance, while incorporating additional provisions not in the Ordinance, reflected the political dynamics of the parliamentary process.

The constitutional law dimension of the 2026 Amendment deserves analysis from the perspective of fundamental rights. The right to form associations, including trade unions, is guaranteed by Article 38 of the Constitution of Bangladesh, which provides that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order. The question of whether the previous 20 percent threshold for union formation was a "reasonable restriction" within the meaning of Article 38, or an unreasonably high barrier to the exercise of the constitutional right of association, has been a subject of scholarly debate and occasional judicial commentary. The 2025 amendment's replacement of the percentage-based threshold with an absolute number scale makes the union formation threshold considerably less restrictive, and it represents a shift in the legislative interpretation of what constitutes a "reasonable restriction" on the right of association.

The constitutionality of the specific anti-union discrimination provisions, including the prohibition on employer-controlled unions and the prohibition on employer financial support for trade union activities, has also been analyzed in the context of Article 38. The argument that these prohibitions restrict the rights of employers and even of some workers has been raised by employer organizations, but this argument is not legally compelling: the constitutional right of association is a right of workers to form genuine voluntary associations, and it is entirely consistent with this right to prohibit employer interference with the formation of such associations, since such interference by its nature undermines the voluntary and worker-controlled character of the associations that Article 38 protects.

### 13.2 Judicial Review and Labour Law: A Comparative Constitutional Analysis

The relationship between judicial review and labour law reform in Bangladesh requires comparative constitutional analysis. The High Court Division of the Supreme Court of Bangladesh exercises writ jurisdiction under Articles 44 and 102 of the Constitution, which allows it to review the legality of executive action, including the decisions of administrative bodies in the labour administration, and potentially to review the constitutionality of legislation. The Labour Court system, established under Chapter XIV of the Bangladesh Labour Act, 2006, is a specialized adjudicative system for labour disputes, but it does not have jurisdiction over constitutional challenges to the Act itself, which must be brought in the High Court Division.

The body of judicial decisions relevant to labour law in Bangladesh, while not as extensive as in some other common law systems, includes several significant High Court decisions on trade union rights, the scope of the Labour Court's jurisdiction, the constitutionality of specific legislative provisions, and the obligations of the state as an employer. These decisions reflect the complex interaction between the formal constitutional rights framework, the specific statutory provisions of the Bangladesh Labour Act, and the practical realities of labour relations in a political economy deeply shaped by employer power and state institutional weakness.

The Indian Supreme Court's jurisprudence on labour rights provides an important comparative reference point for Bangladeshi constitutional analysis. India's Supreme Court has developed a substantial body of constitutional labour law doctrine under Articles 14 (equality), 19 (fundamental freedoms including the right to association), 21 (right to life and personal liberty), and the Directive Principles of State Policy, which includes the right to work, just and humane

conditions of work, a living wage, and the right to organize. The Indian Supreme Court's application of the Directive Principles as interpretive guides for the scope of fundamental rights, and its development of the concept of social action litigation (public interest litigation) as a mechanism for enforcing socioeconomic rights, has been influential in Bangladeshi judicial thinking, though the Bangladeshi courts have been more conservative than their Indian counterparts in applying constitutional doctrine to expand the scope of enforceable labour rights.

The comparative experience of South Africa is also relevant. The post-apartheid South African Constitution, adopted in 1996, contains an exceptionally robust framework of constitutional labour rights, including explicit constitutional recognition of the right to form and join trade unions, the right to strike, and the right to engage in collective bargaining, as well as an extensive socioeconomic rights framework that includes the right to work and the right to social security. The South African Constitutional Court's jurisprudence on the interpretation and enforcement of these constitutional labour rights, particularly in cases such as National Union of Metalworkers of South Africa v. Bader Bop (Pty) Ltd (2003) and South African National Defence Union v. Minister of Defence (1999), has generated a substantial academic literature on the constitutional dimensions of labour rights that is highly relevant to the development of constitutional labour law doctrine in Bangladesh.

## CHAPTER FOURTEEN: IDEOLOGICAL CONFLICTS IN THE REFORM PROCESS: LIBERALISM, SOCIAL DEMOCRACY, AND DEVELOPMENTAL NATIONALISM

### 14.1 The Ideological Landscape of Bangladeshi Labour Policy

The political economy of labour law reform in Bangladesh is shaped not only by material interests and institutional configurations but also by ideological conflicts about the proper role of labour law in a developing economy and the appropriate balance between economic efficiency, workers' rights, and social justice. These ideological conflicts do not map neatly onto the conventional categories of left and right in Western political discourse, but they reflect genuinely different understandings of the relationship between economic development and social justice, and they shape the positions of different political actors in the reform process.

The dominant ideological framework in Bangladesh's development policy establishment, as in much of the developing world, has been a variety of developmental nationalism that combines elements of market liberalism, state-led industrialization, and social conservatism. This framework, which can be traced to the development ideology of the Bangladeshi state since independence, holds that the primary goal of economic policy is to maximize economic growth and export performance, that labour regulation should be calibrated to this primary goal, and that workers' rights are important only insofar as their protection is consistent with the requirements of export competitiveness. The interests of the garment industry, as the engine of Bangladesh's export success, are on this view necessarily primary, and labour law reform should be evaluated primarily by its consequences for the garment industry's competitive position.

Against this dominant framework, a social democratic tradition associated with parts of the trade union movement, the labour rights NGO sector, academic labour law scholars, and the political left argues that labour rights are not merely instrumental to development but are constitutive of

development, and that a development model that impoverishes workers and denies them their fundamental rights is not genuine development but exploitation. This social democratic tradition draws on the ILO's decent work agenda, the capabilities approach associated with Sen and Nussbaum, and the Rawlsian liberal tradition in political philosophy, and it argues that a genuinely just development model must place workers' rights and social protection at its center rather than treating them as externalities.

A third ideological position, associated with the more radical elements of the labor movement and parts of the political left, takes a structuralist or Marxist perspective, arguing that the fundamental problem with Bangladesh's labour law is not that it is inadequately reformed but that it is embedded in a capitalist system that is structurally incapable of genuinely protecting workers' interests, and that reform within the existing system, however important for immediate material improvements, cannot address the structural causes of workers' exploitation. This position, while analytically important, is politically marginalized in the current Bangladeshi context and has limited direct influence on the reform process, though it provides important intellectual resources for the critical analysis of the limits of reformist strategies.

### 14.2 The Washington Consensus, the Post-Washington Consensus, and Labour Policy

The ideological history of development economics provides important context for understanding the evolution of labour policy in Bangladesh. The Washington Consensus, which dominated international development thinking from the late 1980s through the 1990s, advocated structural adjustment programmes that combined fiscal austerity, trade liberalization, privatization of state enterprises, and deregulation of labour markets. The application of Washington Consensus prescriptions to developing country labour markets produced a wave of labour law reforms in the 1990s and 2000s that reduced formal sector employment protections, weakened trade union rights, and increased labour market flexibility, all in the name of competitiveness and attracting foreign investment.

The failure of Washington Consensus labour market reforms to deliver the promised development outcomes, and the evidence that labour market flexibility in developing countries often produced higher informality, lower wages, and greater inequality rather than higher productivity and faster growth, contributed to the emergence of the Post-Washington Consensus associated with Joseph Stiglitz, Dani Rodrik, and others. The Post-Washington Consensus acknowledged the importance of institutional complementarities, social capital, and non-market coordination mechanisms in development, and created more space for a positive role for labour regulation in development policy. The ILO's decent work agenda, which argued that productive employment under conditions of decent work was both a goal and a means of development, can be understood as a contribution to the Post-Washington Consensus from a labour perspective.

Bangladesh's labour policy over the past two decades has been shaped by an uneasy mixture of Washington Consensus and Post-Washington Consensus influences. The pressure from the World Bank, the IMF, and bilateral development partners for labour market flexibility and investment climate improvements has been in tension with the ILO's advocacy for improved labour standards and the European Union's GSP conditionality. The result has been a pattern of formal legal improvement in labour standards combined with systematic under-enforcement,

which represents a kind of political economy compromise between the different ideological pressures: enough formal reform to satisfy international compliance requirements and maintain trade preferences, but insufficient enforcement to impose significant costs on the employer class or to alter the fundamental power relations of the labour market.

The Labour Reform Commission's April 2025 report represents a departure from this pattern, at least in normative terms. The Commission's embrace of the living wage concept, its recommendations for extending labour law coverage to informal workers, and its emphasis on genuine enforcement through strengthened institutions reflect a more thoroughly Post-Washington Consensus approach that treats labour standards as development goals rather than compliance burdens. Whether the political economy of implementation will allow these normative commitments to be realized in practice is the central uncertainty.

### 14.3 Islamic Political Economy and Labour Law

The Islamic political economy tradition, which has significant intellectual and political presence in Bangladesh through the Jamaat-e-Islami and associated scholarly networks, offers a distinctive perspective on labour rights and labour law that has been insufficiently engaged in the mainstream academic analysis of Bangladesh's labour law reform. The Islamic conception of economic justice, drawing on the Quranic injunctions against exploitation (zulm) and the prophetic traditions on fair wages and the rights of workers, includes a substantive commitment to the dignity and fair treatment of workers that has some potential points of convergence with the labour rights framework, but also significant divergences rooted in its fundamentally different cosmological and social premises.

Islamic economic thought emphasizes the concept of adl (justice) in economic transactions, the prohibition of riba (interest) and gharar (excessive uncertainty), the obligation of zakat (charitable giving) as a mechanism for redistribution, and the concept of kafala (guardianship or sponsorship) that governs many labour migration arrangements in Gulf states. The application of these concepts to the specific questions of labour law reform in Bangladesh, including minimum wages, collective bargaining rights, maternity benefits, and the extension of protection to informal workers, is a complex interpretive exercise that has generated substantial debate within the Islamic jurisprudential tradition.

The political influence of Islamist political parties on Bangladesh's labour policy has been primarily expressed not through a positive Islamic economic programme for labour reform but through selective opposition to specific reform measures that are perceived as conflicting with Islamic social norms, particularly those relating to women's employment, gender equality provisions, and the broader social implications of women's mass participation in the industrial workforce. The BGMEA's use of Islamic conservative social values to justify restrictions on women's union organizing and to resist reforms that would increase women workers' independence reflects the intersection of class interest and religious ideology in the political economy of labour law resistance.

## CHAPTER FIFTEEN: REFORM TRAJECTORIES, STRUCTURAL CONDITIONS, AND THE PROSPECTS FOR TRANSFORMATION

## 15.1 Comparative Perspectives on Labour Law Reform in Development Contexts

The comparative experience of labour law reform in other developing economies provides important lessons for assessing the prospects of Bangladesh's ongoing reform process. The cases of Cambodia, Vietnam, Indonesia, and India offer particularly relevant comparative reference points, given their similar positions in the global garment supply chain and their broadly comparable political economy contexts.

Cambodia's Better Factories programme, established in 2001 through a collaboration between the ILO, the US government, and the Cambodian garment industry, is widely regarded as one of the most successful experiments in labour standards improvement in a developing country context. The programme linked Cambodian garment exports to the US market to compliance with Cambodian labour law and international labour standards, creating a direct commercial incentive for labour law compliance that was monitored through a systematic factory inspection programme operated by the ILO rather than by the Cambodian state. The Better Factories programme achieved genuine improvements in labour conditions in the Cambodian garment sector, particularly in the domains of OSH, working hours, and the freedom of workers to organize, and it created institutional infrastructure for labour governance that has persisted beyond the original trade incentive programme.

The Cambodian case has several lessons for Bangladesh. First, it demonstrates that the combination of commercial incentives, credible monitoring, and international institutional support can produce genuine improvements in labour standards even in a context of weak state enforcement capacity. Second, it demonstrates the limitations of supply chain governance mechanisms that are dependent on international support: when the trade preferences that created the commercial incentive were modified, the pace of labour standard improvement slowed significantly. Third, it illustrates the importance of genuine freedom of association as a complement to compliance monitoring: factories with genuine trade unions tend to have better compliance records, because workers are better able to identify and report violations and to advocate for improvements.

Vietnam's labour law reform experience is also instructive. Vietnam's accession to the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership), which requires compliance with ILO core labour standards as a condition of preferential market access, created a powerful external incentive for comprehensive labour law reform, including the significant amendment of Vietnam's Labour Code in 2019 to allow the formation of enterprise-level workers' organizations independent of the official Vietnam General Confederation of Labour. The Vietnamese reform represents a case in which international trade conditionality drove domestic labour law reform in a context where the ruling Communist Party retained primary control over the pace and direction of change, limiting the degree to which the formal legal reforms translated into genuine improvements in workers' organizing capacity.

Bangladesh's reform trajectory shares important features with both the Cambodian and Vietnamese cases. Like Cambodia, Bangladesh has been significantly influenced by the combination of international supply chain pressures and ILO technical assistance. Like Vietnam, Bangladesh has undertaken labour law reform in the context of significant external pressure from

trading partners, particularly the EU's GSP conditionality and the ILO's roadmap commitments. But Bangladesh's political context is more fluid and contested than Vietnam's, and the post-July Revolution political opening creates possibilities for more genuinely participatory reform that neither Cambodia nor Vietnam has fully achieved.

## 15.2 The Bangladesh Labour (Amendment) Bill 2026 in Light of the ILO 2021-2026 Roadmap

The enactment of the Bangladesh Labour (Amendment) Bill 2026 in April 2026 represents Bangladesh's most significant step toward fulfilling the commitments made in its 2021 ILO roadmap, which committed Bangladesh to completing specified labour law reforms by 2026. The timing of the Bill's passage, in the final year of the roadmap's implementation period, reflects both the political delays and constraints that have characterized the reform process and the political imperative of meeting the roadmap's deadline, which is directly linked to Bangladesh's GSP preferences and its standing in the ILO's supervisory system.

The ILO's CEACR's 2025 observation on Bangladesh's compliance with Conventions 81, 87, and 98 provided a detailed technical assessment of the extent to which the November 2025 Ordinance, and by implication the subsequent 2026 Amendment Bill, fulfils Bangladesh's roadmap commitments. The CEACR's assessment was cautiously positive about the direction of reform while noting specific areas where the reforms fell short of what the Conventions require. On Convention 87 (Freedom of Association), the CEACR welcomed the reduction in union formation thresholds but noted that even the new thresholds may still be excessive in some contexts, and called for further reduction. The CEACR also noted the persistent problem of anti-union violence and the lack of effective legal remedies for dismissed union organizers, and called for specific statutory provisions guaranteeing reinstatement as the primary remedy for unfair dismissal connected with union activity.

On Convention 98 (Right to Organize and Collective Bargaining), the CEACR expressed concern about the limited scope of collective bargaining in the EPZ sector, where different rules apply under the Bangladesh Export Processing Zones Labour Act, and about the absence of effective mechanisms for extending collective agreements beyond the enterprise level to cover the industry or sectoral levels at which wage and condition standards need to be set to be effective.

On Convention 81 (Labour Inspection), the CEACR noted the reforms of DIFE's organizational structure and the increase in inspector numbers, but expressed concern about the continuing resource constraints, the corruption problem, and the lack of effective penalties for violations of inspection-related requirements.

## 15.3 The Future of Labour Law Reform: Structural Conditions and Political Possibilities

The prospects for genuine transformation in Bangladesh's labour law system, measured not merely by formal legal changes but by meaningful improvements in workers' lived experience of their legal rights, depend on a complex interaction of structural conditions and political possibilities that cannot be reduced to any simple formula or linear trajectory.

The most fundamental structural condition is the character of Bangladesh's insertion into the global economy. Bangladesh's export dependence on the garment sector, its competitive position in the global fast fashion supply chain, and the pricing pressures that characterize its relationships with international buyers together create structural constraints on wage levels and labour standards that are not primarily amenable to domestic legal reform. Addressing these structural constraints requires simultaneous action on multiple fronts: domestic policy reforms that strengthen workers' bargaining power and improve enforcement, international supply chain governance reforms that challenge the price squeeze at the brand-supplier interface, and potentially the development of new, higher value-added industries that can sustain higher wages without depending on low-cost competition.

The political condition most important for the durability of the reform process is the organizational development of the trade union movement. The reforms of the November 2025 Ordinance and the 2026 Amendment Bill have created formal legal space for the growth of genuine, independent trade unionism in the formal manufacturing sector. Whether this formal space is converted into organizational reality depends on the willingness and capacity of workers to exercise their new rights, the effectiveness of the state's protection of those rights against employer retaliation, and the organizational and financial resources available to support union organizing activities.

The international economic condition most immediately relevant is the trajectory of Bangladesh's GSP preferences as LDC graduation approaches. The economic analysis strongly supports the conclusion that maintaining preferential EU market access is worth the labour cost increases required to achieve GSP-plus qualification, and this provides a continuing external incentive for reform implementation. But the political economy of trade conditionality is complicated by the asymmetry between the visibility of labour cost increases (immediate, certain, and concentrated among employers) and the benefits of maintaining market access (deferred, contingent, and diffuse across exporters and the national economy). Overcoming this asymmetry requires clear government communication of the economic logic of reform and, ideally, a political economy of compensation for the most adversely affected employers.

## CHAPTER SIXTEEN: PHILOSOPHICAL SYNTHESIS: THE POLITICAL ECONOMY OF JUSTICE AND THE FUTURE OF LABOUR LAW IN BANGLADESH

### 16.1 The Normative Foundations of Political Economy Analysis

The political economy analysis developed throughout this Part has been primarily descriptive and analytical: it has sought to explain why Bangladesh's labour law looks the way it does, why certain reforms have been achieved and others have not, and what structural conditions shape the possibilities of future reform. But political economy analysis is never purely descriptive: it is always animated by normative judgments about the importance of the phenomena being analyzed and the significance of the patterns it identifies. In this concluding synthesis, those normative foundations are made explicit.

The fundamental normative premise of this Part is that the conditions under which the majority of Bangladesh's workers live and work, characterized by poverty wages, unsafe working

conditions, denial of the right to organize, exclusion from basic social protection, and subjection to arbitrary employer power, constitute a serious injustice that the legal system has both the responsibility and the capacity to address. This normative premise draws on multiple philosophical traditions: on the republican tradition's condemnation of arbitrary domination, on the Rawlsian liberal tradition's insistence on the claims of the least advantaged, on the capabilities tradition's emphasis on what people are actually able to do and be, on the Marxist tradition's analysis of exploitation as a structural feature of capitalist labour relations, and on the human rights tradition's recognition of workers' rights as fundamental human rights grounded in the equal dignity of all persons.

The philosophical synthesis that emerges from engaging these multiple traditions is not a simple reconciliation that dissolves the genuine tensions between them. The Marxist and liberal traditions, the republican and capabilities traditions, the feminist and postcolonial traditions: these generate different emphases, different priorities, and sometimes genuinely incompatible prescriptions. But they converge on a set of normative claims about Bangladesh's labour law that are, I believe, defensible from the perspective of each of these traditions.

The first convergent claim is that the current organization of Bangladesh's labour market, in which the vast majority of workers are employed under conditions of extreme vulnerability and without effective access to formal legal protection, is morally unjust and must be addressed by legal reform. This claim is broadly shared across the philosophical traditions engaged in this textbook, even though the analysis of the causes of this injustice and the appropriate remedial strategies differs significantly between them.

The second convergent claim is that genuine legal reform requires not merely the improvement of formal legal texts but the development of the institutional capacity, the organizational infrastructure, and the political conditions necessary for the effective implementation of formal legal rights. The persistent gap between formal law and social reality in Bangladesh's labour law system is not merely a technical failure of implementation but a political failure that reflects the structural dominance of employer interests in the political economy of regulatory governance. Addressing this failure requires attention to the political economy of reform as well as to the formal content of the law.

The third convergent claim is that workers themselves, not merely their formal legal representatives or international advocates, must be the primary agents of the transformation of their working conditions. The philosophical traditions of republicanism, capabilities theory, democratic theory, and feminism all emphasize, in different ways, the importance of voice, agency, and participation in the processes that determine the conditions of one's life. Any reform of Bangladesh's labour law that fails to build the organizational capacity of workers to exercise genuine agency in the determination of their working conditions, whether through trade unions, workplace committees, community organizations, or other forms of collective action, will be incomplete and ultimately fragile.

## 16.2 The Dialectic of Reform and Resistance in Bangladesh's Labour Law History

The political economy of Bangladesh's labour law reform, surveyed in this Part, can be understood as a dialectical process in which workers' mobilization for improved conditions generates employer resistance and state mediation, the resolution of this tension through legal reform creates new conditions that alter the possibilities of subsequent mobilization, and the reformed institutional framework becomes the terrain on which the next cycle of contestation takes place. This dialectical understanding of reform is preferable to either the teleological view that progress toward improved labour standards is inevitable and cumulative, or the cynical view that formal legal reform is merely a mechanism of legitimation that leaves fundamental power relations unchanged.

The history of Bangladesh's labour law reveals genuine achievements as well as genuine failures. The abolition of the master-servant framework, the establishment of minimum wage legislation, the creation of formal trade union rights, the improvement of maternity protections, the strengthening of OSH requirements after Rana Plaza: these are real improvements that have made real differences to the working lives of real people, even if they fall far short of what justice requires. The July Revolution of 2024 and the reform process it initiated represent the latest cycle in this dialectical history, and the 2025 and 2026 amendments represent genuine advances, however incomplete and contested.

The task for the next cycle of contestation, which will take place within the institutional framework created by the recent reforms, is to convert the formal legal improvements of 2025-2026 into genuine organizational power for workers, genuine institutional capacity for effective enforcement, and genuine political representation for workers' interests in the processes through which Bangladesh's labour law will continue to evolve. The philosophical traditions surveyed in this textbook provide normative resources for imagining what a genuinely just labour law for Bangladesh would look like. The political economy analysis of this Part provides a realistic assessment of the structural conditions and political possibilities within which that vision must be pursued. And the institutional analysis of earlier parts provides guidance on the specific reforms of the enforcement apparatus, the dispute resolution system, and the social protection framework that are necessary to close the gap between vision and reality.

## 16.3 The Concept of Transformative Constitutionalism and Its Application to Bangladesh's Labour Law

The concept of transformative constitutionalism, developed primarily in the context of South African constitutional theory by scholars such as Karl Klare, Dennis Davis, and Theunis Roux, but applied more broadly by scholars including Julieta Lemaitre, Boaventura de Sousa Santos, and Roberto Gargarella, offers a particularly illuminating philosophical framework for understanding the potential and the limitations of legal reform as an instrument of social justice in a context of profound structural inequality.

Transformative constitutionalism holds that constitutions in countries with histories of structural injustice are not merely legal documents that distribute powers and protect rights, but transformative projects that commit the political community to the realization of a fundamentally different social order. On this view, the constitution is not the expression of an existing political consensus but a commitment to a future social transformation, and the role of law, including

labour law, is not merely to maintain the existing order but to contribute to the realization of the transformation the constitution commits to.

Applied to Bangladesh, the transformative constitutionalism framework suggests that the Fundamental Principles of State Policy in Part II of the Constitution, which include commitments to ensuring a just economic order, providing just conditions of work and a living wage, and ensuring freedom of association, are not merely aspirational statements but normative commitments that give direction and urgency to the project of labour law reform. On this reading, the gap between the formal constitutional commitments and the social reality of most Bangladeshi workers' lives is not merely a policy failure but a constitutional failure, a failure to deliver on the transformative promise that the Constitution of Bangladesh, 1972, made to its citizens.

This transformative constitutional reading of Bangladesh's labour law obligations has practical implications for the design and evaluation of the reform agenda. It implies that the standard of adequacy for labour law reform is not whether it improves the current situation at the margin, but whether it represents genuine progress toward the realization of the constitutional vision of economic and social justice. It implies that reforms that achieve formal compliance with international standards while leaving the fundamental structural inequalities of the labour market intact are inadequate by the standard of transformative constitutionalism. And it implies that the pace of reform must be responsive to the urgency of the injustice being addressed, not merely to the administrative convenience of the bureaucracy or the political comfort of the employer class.

### 16.4 Just Transition, Green Labour Standards, and the Environmental Dimension

The concept of just transition, which has emerged as a central framework in both environmental policy and labour policy over the past decade, adds an important dimension to the political economy of labour law reform in Bangladesh that has been insufficiently addressed in the mainstream reform debate. Just transition refers to the management of the economic and social impacts of the transition to a low-carbon, environmentally sustainable economy on workers and communities that are dependent on high-carbon industries and practices, in a way that ensures that the costs of transition are fairly distributed and that workers and communities are not left behind.

For Bangladesh, the just transition concept has specific relevance given the country's extraordinary vulnerability to climate change and the significant environmental impacts of its industrial development model. The RMG sector, which has been the engine of Bangladesh's economic growth, is a significant consumer of water, energy, and chemicals, and its supply chains are associated with environmental impacts ranging from water pollution to greenhouse gas emissions that are increasingly subject to international scrutiny and regulation.

The incorporation of environmental and just transition considerations into the labour law reform agenda reflects a growing recognition that labour rights and environmental rights are not competing claims but are complementary dimensions of a genuinely just development model. Workers who are exposed to environmental hazards in the workplace, who live in communities vulnerable to flooding and cyclones intensified by climate change, and whose livelihoods depend

on industries that must transform themselves to be environmentally sustainable, have a direct stake in environmental policy as well as in labour law. The convergence of labour and environmental advocacy, which has been a feature of progressive politics in many countries and is increasingly relevant to Bangladesh's political economy, offers potential for a broader reform coalition that can overcome some of the structural limitations of purely labour-focused advocacy.

The ILO's 2015 Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All, and its 2022 report on a just transition for a greener economy, provide a normative framework that Bangladesh's labour reform agenda should engage more directly. The Labour Reform Commission's April 2025 report touched on some environmental dimensions of labour standards, particularly in the context of OSH and chemical safety, but did not develop a comprehensive just transition framework. Future iterations of Bangladesh's labour reform agenda should engage more seriously with the intersection of climate change, environmental sustainability, and workers' rights.

## CONCLUDING REMARKS ON PART THIRTEEN

Part Thirteen has offered a comprehensive political economy analysis of labour law reform in Bangladesh, moving through multiple theoretical frameworks and levels of analysis to develop an account that is simultaneously rigorous in its engagement with political economy theory, grounded in the specific institutional and historical context of Bangladesh, and normatively committed to the realization of workers' rights and social justice.

The central conclusion of the analysis is that Bangladesh's labour law reform process is shaped by a complex and contested configuration of structural forces, institutional arrangements, ideological conflicts, and political possibilities, none of which individually determines the outcome of reform, but all of which collectively constitute the political environment within which reform advocates, trade unionists, civil society organizations, international institutions, employers, and state actors operate. The reforms of 2024-2026, significant as they are, represent a partial and contested shift in this configuration, driven primarily by the political opening created by the July Revolution, the sustained external pressure of the ILO roadmap and the EU GSP conditionality, and the dedicated advocacy of a reform coalition that was able to take advantage of a unique political moment.

The durability of these reforms, and the prospects for deeper transformation in subsequent cycles of the reform dialectic, depend primarily on whether the formal legal changes of 2025-2026 are converted into genuine organizational power for workers, genuine institutional capacity for effective enforcement, and genuine political representation for workers' interests. This conversion requires sustained investment in the organizational development of the trade union movement, in the institutional strengthening of the labour administration apparatus, and in the political economy of democratic accountability that makes state institutions genuinely responsive to workers' rights and interests rather than primarily to employer preferences and international compliance pressures.

The philosophical synthesis developed in the final chapter of this Part draws on republican, liberal, capabilities, Marxist, feminist, and transformative constitutional traditions to articulate a

normative vision of genuinely just labour law for Bangladesh, one that is grounded in the equal dignity of all workers, that recognizes the structural character of labour market inequality and the corresponding obligation of the law to actively address it, and that places workers' genuine agency and organizational power at the center of the reform project. This normative vision provides both a standard for evaluating the adequacy of existing reforms and a guide for the direction of future reform efforts.

The analysis of Part Thirteen connects to the broader project of this textbook, which seeks to understand Bangladesh's labour law not merely as a technical legal system but as a social institution deeply embedded in the political economy, the historical legacy, and the ongoing struggles for justice and dignity that define the lived experience of Bangladesh's working people. The labour law of Bangladesh is, ultimately, a measure of the kind of society Bangladesh is and aspires to be: whether it is a society that treats the labor of its workers as an instrument of national economic advancement to be maximized and minimized in cost, or whether it is a society that recognizes the fundamental worth and dignity of every working person and is committed to creating the legal, institutional, and political conditions in which that dignity can be realized.

The July Revolution opened a window. Part Fourteen of this textbook will examine whether the formal legal changes of the 2025-2026 reform cycle are translating into meaningful improvements in the specific domain of collective labour rights, freedom of association, and the capacity of workers to exercise genuine self-governance in their working lives.

## BIBLIOGRAPHICAL NOTE AND FURTHER READING FOR PART THIRTEEN

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*End of Part Thirteen*

*Part Fourteen will examine the Law of Collective Labour Rights in Bangladesh: Freedom of Association, Trade Union Rights, Collective Bargaining, and the Right to Strike, building on the political economy analysis of this Part to provide a comprehensive legal analysis of the formal framework and its practical operation, the constitutional dimensions of collective labour rights, the international standards applicable to Bangladesh, and the specific challenges and opportunities created by the 2025-2026 reforms for the development of a genuinely pluralist and effective system of collective labour relations.*

# PART FOURTEEN: THE LAW OF COLLECTIVE LABOUR RIGHTS IN BANGLADESH - FREEDOM OF ASSOCIATION, TRADE UNION RIGHTS, COLLECTIVE BARGAINING, AND THE RIGHT TO STRIKE

## PREFATORY NOTE ON PART FOURTEEN

Part Thirteen examined the political economy of labour law reform in Bangladesh through the lenses of structural power, institutional analysis, and transformative constitutionalism, situating the reforms of 2024-2026 within the broader dialectic of capital, state, and labour that has defined the trajectory of Bangladesh's development since independence. Part Fourteen turns to what is perhaps the most contested and consequential domain within that broader framework: the law of collective labour rights. It examines freedom of association, trade union formation and registration, collective bargaining, and the right to strike not merely as technical legal questions but as the site of the deepest philosophical controversies, the most acute political conflicts, and the most significant reform battles in the entire terrain of Bangladeshi labour law.

The analysis proceeds across fifteen chapters, each of which develops a distinct but interconnected dimension of the subject. The opening chapters establish the philosophical and jurisprudential foundations of collective labour rights, exploring the competing theoretical traditions that have sought to ground, explain, and critique the right of workers to organize collectively. Subsequent chapters examine the historical development of trade unionism in the subcontinent and in Bangladesh, trace the evolution of the statutory framework for collective labour rights under the Bangladesh Labour Act, 2006 and its successive amendments, and provide a detailed doctrinal analysis of the current law of trade union registration, collective bargaining, and industrial action. The later chapters engage with the structural failures of the collective labour relations system, the phenomenon of anti-union discrimination, the particular problems of the export processing zones, the rights of public sector workers, and the relationship between collective labour rights and the constitutional order. The final chapters examine the transformative potential of the 2025 Amendment Ordinance and the 2026 legislation, place Bangladeshi collective labour law in comparative and international perspective, and offer a philosophical synthesis that connects the technical legal analysis to the fundamental questions of justice, dignity, and power that animate the entire enterprise.

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## CHAPTER ONE: THE PHILOSOPHICAL AND JURISPRUDENTIAL FOUNDATIONS OF COLLECTIVE LABOUR RIGHTS

### 1.1 Why Collective Rights? The Limits of Liberal Individualism in Labour Law

The question of why workers should have collective rights at all is not as simple as it might initially appear. Liberal political philosophy, in its classical formulation associated with John Locke, Adam Smith, and John Stuart Mill, is fundamentally committed to individual rights and individual freedom. The liberal tradition conceives of society as composed of essentially separate and self-sufficient individuals who enter into voluntary associations and exchange relationships for mutual benefit. On this conception, the right to work, the right to contract, and the right to

organize all flow ultimately from the fundamental right of every individual to dispose of his or her own labour power as he or she sees fit. Trade unions, from this perspective, are simply voluntary associations of workers who choose to act collectively in pursuit of their individual interests, and the right to form such associations is simply an application of the general principle of freedom of association that applies to all voluntary groups.

This liberal individualist account of the foundations of collective labour rights has a certain formal elegance, but it conceals more than it reveals about the actual nature and function of trade unions and collective bargaining. The deeper philosophical question is not whether workers have the right to form voluntary associations, which liberal theory readily concedes, but whether the particular form of collective action that trade unions engage in has a distinctive moral and political significance that goes beyond what individual association theory can capture. This deeper question requires engaging with philosophical traditions that go beyond classical liberalism.

The republican tradition in political philosophy, which has its roots in the civic humanism of Aristotle, the Roman jurisprudential tradition, and the political thought of Machiavelli and James Harrington, and which has been given its most sophisticated contemporary formulation by Philip Pettit, offers a distinctive account of why collective labour rights matter. For Pettit, the fundamental political value is freedom as non-domination: the condition of a person who is not subject to the arbitrary will of another, who cannot be interfered with at the pleasure of a more powerful person or institution, whose security and freedom are not dependent on the goodwill of those who hold power over them. The employment relationship, as Pettit and his collaborators John Lovett and Alex Gourevitch have argued, is structurally dominated: the individual worker, absent any collective organization, is subject to the arbitrary will of the employer in ways that are incompatible with republican freedom. The employer can, subject to the minimal constraints of individual employment law, direct the worker's activity, determine the conditions of work, impose discipline, and ultimately terminate the employment relationship at will. The worker who lacks union membership and collective bargaining protection is in a condition of structural dependency that Pettit's republicanism identifies as a form of unfreedom even when the employer exercises authority in a generally benign manner.

The republican argument for collective labour rights is thus not merely that unions make workers materially better off, though they often do, but that unions are constitutive of workers' freedom in a deeper sense: they transform the worker's position in the employment relationship from one of structural dependency and potential domination to one of collective power and negotiated governance. The workplace with a recognized trade union and a functioning collective bargaining agreement is, on the republican account, a more genuinely free institution than the workplace where individual workers confront the employer's power alone. This republican insight was explicitly formulated in the classic study by Sidney and Beatrice Webb, "Industrial Democracy" (1897), which argued that collective bargaining is the industrial counterpart of political democracy: just as democracy in the political sphere requires that those subject to authority have a voice in determining the rules by which they are governed, industrial democracy requires that workers have a collective voice in determining the rules of the workplace.

The Marxist tradition offers a more radical account of the significance of collective labour rights, one that places the question of power at the center of the analysis. For Marx, the individual employment contract is a site of exploitation dressed in the language of freedom and equality: the worker, compelled by the absence of any other means of subsistence to sell his or her labour power, enters what is formally presented as a free and equal exchange but is in reality a relationship of systematic expropriation. Trade unions, from this perspective, are not merely voluntary associations or republican counter-powers but are the fundamental organizational form through which the working class constitutes itself as a collective actor capable of contesting the power of capital. The right to organize and the right to strike are not simply rights within the capitalist system but are rights that create the preconditions for challenging and potentially transforming that system. Karl Marx himself, in his writings on the International Workingmen's Association, was carefully ambiguous about the relationship between trade union struggle and revolutionary transformation, observing both the essential role of unions in defending workers' immediate interests and the danger that unions might become purely defensive institutions that accommodated themselves to capitalism rather than challenging it.

The feminist tradition in labour law philosophy, developed by scholars including Judy Fudge, Joanne Conaghan, and Katherine Stone, has offered a sustained critique of the dominant theoretical frameworks for collective labour rights on the grounds that those frameworks have been shaped by a deeply gendered conception of the workplace and the worker. The model of the industrial union engaged in collective bargaining on behalf of a mass of male, full-time, permanent employees in manufacturing industry has dominated the development of collective labour law and has shaped both the theoretical frameworks and the institutional designs through which collective rights have been articulated and protected. This model has systematically marginalized and excluded the forms of work in which women are disproportionately represented: domestic service, home-based work, part-time and temporary employment, and the informal economy. The feminist critique thus demands not merely better enforcement of existing collective labour rights but a fundamental reconceptualization of what those rights are, who they protect, and how they can be made meaningful for the diverse reality of working people's lives. In Bangladesh, where millions of women work in the ready-made garments sector under conditions of acute vulnerability and where domestic workers remain structurally excluded from the mainstream labour law regime, this feminist critique has immediate and urgent practical relevance.

### 1.2 Freedom of Association as a Human Right: The International Law Framework

The reconceptualization of freedom of association and trade union rights as genuine human rights, rather than merely instrumental protections for workers' economic interests, has been one of the most significant developments in labour law theory and international labour law over the past three decades. This reconceptualization has been driven by multiple convergent forces: the development of the international human rights framework through the UN treaty system, the jurisprudence of regional human rights bodies, the theoretical work of philosophers of labour rights, and the institutional evolution of the ILO itself.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which Bangladesh ratified in 1998, recognizes in its Article 8 the right of everyone to form and join

trade unions of his or her choice, subject only to the rules of the relevant organization, and the right to strike, subject to conditions established by national law. The Universal Declaration of Human Rights, though not formally a binding treaty, affirms in Article 23(4) the right of everyone to form and join trade unions for the protection of their interests. The International Covenant on Civil and Political Rights, in its Article 22, protects freedom of association, which the Human Rights Committee has interpreted to include the right to form and join trade unions. These provisions collectively establish freedom of association and trade union rights as genuine human rights under international law, and Bangladesh's ratification of the relevant instruments creates binding international legal obligations.

The ILO framework is, however, the most developed and institutionally significant body of international law governing collective labour rights. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), constitute the two foundational instruments, and together with the 1998 ILO Declaration on Fundamental Principles and Rights at Work, they establish freedom of association and the effective recognition of the right to collective bargaining as core or fundamental principles binding on all ILO member states regardless of ratification status. Bangladesh ratified both Conventions in 1972, immediately after independence, a gesture of considerable symbolic significance that created immediate binding legal obligations which, as subsequent history has repeatedly demonstrated, the law and practice of Bangladesh has failed consistently to fulfill.

The philosophical significance of the ILO's approach to freedom of association goes beyond the technical content of the Conventions. The ILO itself was established in 1919 on the constitutional premise that "universal and lasting peace can be established only if it is based upon social justice," and that "labour is not a commodity." These premises, stated in the ILO's preamble, reflect a philosophical commitment to the idea that the relations between employers and workers are not simply market transactions subject to the ordinary logic of supply and demand but are relations that have a distinctive moral and political character requiring special treatment. The principle that "labour is not a commodity" is, at its deepest level, a philosophical claim about the nature of the employment relationship: it asserts that the capacity for work, unlike ordinary commodities, is inseparable from the human person who exercises it, and that the conditions under which labour power is bought and sold therefore implicate the dignity, autonomy, and humanity of the worker in ways that the conditions under which ordinary commodities are traded do not. This principle provides the deepest philosophical foundation for the special treatment of collective labour rights in international law: because labour is not a commodity, workers are not merely market actors maximizing utility but persons with dignity who are entitled to organize collectively to protect that dignity in the conditions of their working lives.

The development of the ILO's supervisory framework has produced an extraordinarily rich body of jurisprudence on the content and limits of freedom of association. The Committee on Freedom of Association (CFA), established in 1951 and composed of equal numbers of government, employer, and worker representatives, has examined thousands of cases involving alleged violations of freedom of association and has developed a detailed body of principles that fills in the general provisions of Conventions 87 and 98 with specific guidance on issues ranging from

registration requirements to strike restrictions. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) provides the systematic supervisory oversight of state parties' compliance with the Conventions through its annual examination of government reports and its detailed observations and direct requests. The case law produced by these two bodies constitutes an essential reference point for any serious analysis of freedom of association in Bangladesh.

The most contentious question in recent ILO jurisprudence, and indeed in the broader international law of collective labour rights, has been whether the right to strike is protected by the ILO's fundamental Conventions, and in particular by Convention No. 87. This question became the subject of an acute institutional crisis within the ILO starting around 2012, when the employer group on the Committee of Experts disputed the longstanding CEACR interpretation that the right to strike is protected by Article 3 of Convention No. 87 as an aspect of the right of organizations to organize their activities and to formulate their programmes. The employer group's position, supported by certain governments, was that Convention No. 87 is silent on the right to strike and that any interpretation of the Convention as protecting the right to strike exceeds the CEACR's mandate and authority. This dispute paralyzed the ILO's supervisory system for several years and ultimately led to the extraordinary referral to the International Court of Justice for an advisory opinion on the question of whether the right to strike of workers and their organizations is protected under Convention No. 87. The ICJ held public hearings on this question over three days in October 2025, and its advisory opinion, expected in 2026, stands to be one of the most significant developments in the international law of collective labour rights in decades. The implications of this advisory opinion for Bangladesh's law and practice will be examined in detail in Chapter Nine of this Part.

### 1.3 Collective Labour Rights and Constitutional Theory: Bangladesh's Basic Framework

The relationship between collective labour rights and the constitutional order in Bangladesh is a complex and, in important respects, deeply unsatisfactory one. The Constitution of Bangladesh, 1972, as subsequently amended, provides limited but genuine constitutional protection for aspects of freedom of association and collective labour rights, though the protection it provides falls well short of the comprehensive constitutional guarantee that the international law framework and the philosophical arguments surveyed above would demand.

Article 38 of the Constitution guarantees to every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order. This constitutional guarantee is formally applicable to workers as much as to any other group of citizens, and it provides the constitutional foundation for the statutory protection of trade union rights under the Bangladesh Labour Act. The guarantee in Article 38 is a Fundamental Right, directly enforceable through the writ jurisdiction of the High Court Division under Article 102, and any law or executive action that unreasonably restricts the right of workers to form associations or unions is potentially open to constitutional challenge.

However, the constitutional protection of collective labour rights in Bangladesh is significantly qualified and limited in ways that reflect both the constitutional design and the historical context in which that design was created. The Directive Principles of State Policy in Part II of the

Constitution, while not directly enforceable, include Article 14, which provides that the exploitation of workers is prohibited, Article 15, which provides for the right to work and the guarantee of just wages, and Article 20, which affirms that work is a right, a duty, and a matter of honor. These provisions reflect a genuine constitutional commitment to the dignity and welfare of working people, but their non-justiciable character means that they cannot be directly enforced in litigation.

The constitutional silence on the right to strike is particularly significant. Unlike some constitutions, including the South African Constitution of 1996, which explicitly recognizes the right to strike in Section 23(2)(c) as a fundamental right, the Bangladesh Constitution contains no express protection of the right to strike. This constitutional silence has created considerable doctrinal uncertainty about the status of the right to strike in Bangladeshi constitutional law, a question that is examined in detail in Chapter Nine.

The role of the superior courts in the development of constitutional doctrine relevant to collective labour rights has been significant but uneven. The High Court Division of the Bangladesh Supreme Court has in a number of cases deployed the constitutional guarantee of freedom of association in Article 38 to review and constrain the exercise of administrative discretion by the Registrar of Trade Unions, and has shown a willingness in some decisions to develop a substantive constitutional doctrine of freedom of association that goes beyond the formal text of the guarantee. The Appellate Division has been more cautious, reflecting both the inherent institutional conservatism of apex courts and the sensitivity of the political economy questions that serious constitutional adjudication of collective labour rights inevitably raises. The development of constitutional doctrine in this area, and its relationship to the recent legislative reforms, is a major theme of the analysis that follows.

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## CHAPTER TWO: THE HISTORICAL DEVELOPMENT OF TRADE UNIONISM IN BENGAL AND BANGLADESH

### 2.1 The Origins of Organized Labour in Bengal: Colonial Industry and Early Union Formation

The history of trade unionism in Bengal is, like so much else in the history of South Asian labour, a history shaped by the particular character of colonial capitalism and the distinctive social formations it created. The emergence of an organized working class in Bengal was associated primarily with the development of the jute industry, which from the mid-nineteenth century transformed the landscape of the Hooghly industrial belt to the west of Calcutta into one of the most concentrated industrial agglomerations in Asia. By the early twentieth century, the jute mills of Hooghly employed hundreds of thousands of workers, many of them migrants from Bihar and eastern United Provinces, in conditions that combined the worst features of factory discipline with the social vulnerabilities of uprooted migrants far from their home communities.

The earliest attempts at trade union organization in Bengal emerged in this context of jute industry employment, but they were slow and hesitant, constrained by the ethnic and caste

diversity of the workforce, the authoritarian character of employer-worker relations in the mills, and the absence of legal recognition for collective action. The Workmen's Breach of Contract Act of 1859, which remained on the statute books until 1925, provided criminal sanctions for workers who breached their employment contracts, giving employers a powerful legal weapon against any form of collective action. The Masters and Servants Act created a framework of coercive labour relations that was fundamentally incompatible with genuine freedom of association, and the colonial administration's approach to labour organization was determined primarily by its interest in maintaining the profitability of colonial enterprise and the stability of colonial order.

The transformation of this landscape began in the aftermath of the First World War, when the global upsurge of labour militancy, the Russian Revolution's ideological impact, and the growing strength of the Indian nationalist movement created conditions favorable to organized labour action in Bengal. The Indian Trade Unions Act of 1926, which provided for the registration and legal recognition of trade unions, was a landmark legislative achievement of the period, establishing for the first time a statutory framework within which workers could collectively organize and be protected from certain forms of employer retaliation. The 1926 Act was far from perfect: it provided no enforceable right to bargain collectively, offered limited protection against anti-union discrimination, and left the strike in an ambiguous legal position that was subsequently clarified by the Trade Disputes Act of 1929. But it represented a genuine advance, and it created the legal infrastructure within which the Bengal trade union movement began to develop in the interwar period.

The interwar period saw the emergence of distinctive Bengal trade unionism shaped by the intersection of nationalist politics, communist ideology, and the social realities of Bengal's labour market. The All India Trade Union Congress (AITUC), founded in 1920 with Lala Lajpat Rai as its first president, became the central organizational forum for Bengal's workers, though it was always deeply divided between its nationalist and communist wings. The Bengal jute workers were organized by a succession of competing organizations, while the railway workers, who occupied a strategically crucial position in the colonial economy, developed a distinctive form of unionism that blended economic demands with political nationalism. The textile workers of what is now eastern Bangladesh, centered in the Narayanganj area, also began to organize during this period, though the pre-partition textile industry of eastern Bengal was considerably less developed than that of Bombay or Ahmedabad.

The partition of 1947 had a devastating and deeply underappreciated impact on the labour movement of eastern Bengal. The jute industry of Bengal was divided in a particularly irrational way: most of the raw jute cultivation was in the east, in Pakistan's new province of East Bengal, while virtually all of the jute mills were in the west, in the Indian state of West Bengal. This partition of the jute economy created enormous difficulties for eastern Bengal's workers and severely disrupted the patterns of labour organization that had developed in the colonial period. The migration of a large part of Bengal's Hindu professional and business class to West Bengal after partition further weakened the organizational capacity of the labour movement in the east, since that movement had depended substantially on educated middle-class organizers and leaders.

## 2.2 Trade Unionism in East Pakistan (1947-1971): Exploitation, Suppression, and Resistance

The labour history of East Pakistan during the period from 1947 to 1971 is a history of economic exploitation by a Pakistani state and ruling class that treated the eastern province primarily as a source of foreign exchange earnings through jute exports and as a captive market for the products of West Pakistan's industry. The systematic economic discrimination against East Pakistan, documented exhaustively by economists including Rehman Sobhan in his celebrated analysis of the "crisis in East Pakistan," had specific and severe consequences for the labour movement of the east. The industrial development that did occur in East Pakistan was primarily oriented toward raw material processing for export, and the working conditions in the jute processing and textile factories of East Pakistan were characterized by the same combination of poverty wages, poor safety conditions, and restricted organizing rights that characterized colonial industry more generally.

Trade union organization in East Pakistan operated under conditions of severe political constraint. The Pakistan state, particularly after the imposition of martial law in 1958 by Ayub Khan, treated independent trade unionism with deep suspicion as a potential vehicle for political dissent and social disorder. The Industrial Disputes Ordinance of 1959, promulgated under Ayub's martial law regime, imposed severe restrictions on the right to strike and established mandatory conciliation and arbitration procedures that were designed to channel industrial disputes away from collective action and into administrative resolution. The labour laws of Pakistan during this period reflected the Bonapartist character of the Ayub regime's political project: they sought to manage and control the working class rather than to protect its rights, and they systematically favored the interests of the nascent Pakistani industrial bourgeoisie that the regime was attempting to create.

The political awakening of Bengali workers in East Pakistan was inseparable from the broader awakening of Bengali national consciousness during the 1960s. The language movement of 1952, the demands for provincial autonomy articulated by Sheikh Mujibur Rahman and the Awami League from the mid-1960s, and the growing resistance to West Pakistani political and economic domination all found resonance among the working class of East Pakistan. The trade unions that operated in East Pakistan during the 1960s, though legally constrained and politically fragmented, were deeply embedded in the broader movement for Bengali rights, and many union leaders were also active participants in the Awami League and other political formations that articulated Bengali national aspirations.

The uprising of November 1969, the mass movement that compelled Ayub Khan's resignation and led to the holding of the general elections of December 1970, had a significant labour dimension. Workers in East Pakistan participated massively in the general strikes and demonstrations of that period, and the devastating electoral victory of the Awami League in December 1970, which won an absolute majority of seats in the national assembly on the basis of overwhelming support in East Pakistan, reflected in part the mobilization of a working class that had been economically exploited and politically marginalized throughout the Pakistan period. When the Pakistani military launched its genocidal crackdown on Bangladesh on the night of 25-

26 March 1971, the killing of workers and trade unionists was an explicit part of the military operation, reflecting the regime's recognition that organized labour was a pillar of the resistance.

### 2.3 Liberation and the Establishment of the Labour Movement's Institutional Framework (1971-1982)

The founding of the People's Republic of Bangladesh in December 1971 created enormous opportunities and equally enormous challenges for the labour movement. The new state, born from a liberation war fought in part on a platform of socialist principles, was rhetorically committed to workers' rights and social justice. The original Constitution of 1972, with its secular and socialist character, reflected the aspirations of a liberation movement that included within it a significant current of labour-oriented politics. The first labour legislation of independent Bangladesh, drawing on the inherited framework of Pakistani labour law while adapting it to the new political context, attempted to create a legal framework more hospitable to trade unionism and collective bargaining than the repressive structures of the Pakistan period.

The Trade Unions Act of 1974 and the associated labour legislation of the early Bangladesh period established the basic institutional framework of trade union registration, collective bargaining, and labour dispute resolution that, with many modifications, continues to govern Bangladeshi collective labour relations today. The framework reflected the tensions inherent in a newly independent state attempting simultaneously to promote industrial development, to satisfy the expectations of a mobilized working class, and to manage the organizational and political challenges of a post-liberation period characterized by extreme economic difficulty and political instability.

The period from 1975 to 1990, marked by successive military governments and the suspension of democratic politics, was a period of severe repression of independent trade unionism. The assassination of Sheikh Mujibur Rahman in August 1975 and the subsequent military takeovers by Ziaur Rahman and then Hussain Muhammad Ershad led to the suppression of politically independent labour organization and the promotion of state-controlled or regime-aligned trade unions. The labour laws of this period were systematically modified to restrict the right to strike, increase the powers of the state over trade union governance, and reduce the effectiveness of collective bargaining. The Bangladesh Labour Federation and its affiliates, which had maintained some degree of independence during the early Bangladesh period, were subjected to intense political pressure to align themselves with the ruling military establishment, and those that refused faced legal harassment, deregistration, and the physical intimidation of their leaders.

Ershad's Jatiya Party government (1982-1990) in particular pursued a deliberately divisive strategy toward the trade union movement, promoting the proliferation of small, politically aligned unions to prevent the emergence of any independent and representative workers' organization. The tripartite institutional framework of government-employer-worker consultation, formally established during this period through the creation of the Tripartite Consultative Council, was used primarily as a mechanism for coopting labour organizations into the state's political management strategy rather than as a genuine forum for collective bargaining. The legacy of this period of state-directed labour relations is one of the deepest structural problems of contemporary Bangladeshi labour relations: a fragmented, politically dependent, and

internally divided trade union movement that has difficulty mounting effective collective representation even in the significantly changed conditions of the present.

### 2.4 The RMG Revolution and the Challenge to Trade Unionism (1980-2013)

The emergence of the ready-made garments industry as the dominant sector of the Bangladeshi economy from the late 1970s and its explosive growth through the 1980s and 1990s created a new and fundamentally challenging context for trade union organization. The RMG sector was, from its inception, characterized by conditions that are structurally hostile to effective trade unionism: a predominantly female workforce with limited prior experience of organized labour action and significant vulnerability to dismissal and replacement; highly fragmented ownership with thousands of separate employers, many operating with thin profit margins and in intense competition; a global supply chain in which the immediate employer was not the ultimate source of economic power, which resided with the international buyers; and a pattern of industrial relations in which employer associations were well-organized and politically well-connected while independent unionism was systematically suppressed.

The legal obstacles to trade union organization in the RMG sector during this period were formidable. The mandatory 30 percent membership threshold for union registration (subsequently reduced to 20 percent in 2006) created a substantial practical barrier to union formation in large factories. The requirement that registration be approved by the Director General of Labour, who exercised broad administrative discretion and who operated in a political environment dominated by employer interests, meant that many applications for registration were delayed, refused, or subjected to conditions that made effective organization impossible. The rules governing trade union governance were so detailed and prescriptive that inadvertent technical non-compliance could provide grounds for deregistration, a power that was used selectively against unions that were genuinely independent and refused to accommodate themselves to employer or government preferences.

The practical obstacles were even more formidable than the legal ones. Workers who attempted to organize unions in RMG factories faced systematic employer retaliation: dismissal of organizers, physical intimidation, use of private security forces to prevent union meetings, and the deliberate division of workforces between multiple legal entities to prevent any single union from achieving the required membership threshold. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA), which represents the interests of the garment export industry, consistently lobbied against measures that would strengthen union rights in the sector, arguing that trade unionism would increase labor costs and reduce Bangladesh's competitiveness in global markets. This argument, though crude in its economic analysis, found a receptive audience in a government whose development strategy was built around the export competitiveness of the RMG sector.

The Rana Plaza disaster of April 2013, in which the collapse of an eight-story commercial building housing five garment factories killed 1,134 workers and injured more than 2,500, was a watershed moment in the politics of trade union rights in the RMG sector. The disaster revealed with brutal clarity the connection between the absence of union representation and the vulnerability of workers to preventable industrial catastrophe. As Phil Robertson, then Deputy

Asia Director of Human Rights Watch, observed in the immediate aftermath: "Let's remember that none of the factories operating in Rana Plaza had trade unions. If their workers had more of a voice, they might have been able to resist managers who ordered them to work in the doomed building a day after large cracks appeared in it." This observation captures a fundamental truth about the relationship between collective representation and worker safety: trade unions are not merely economic institutions for wage bargaining but are protective institutions that give workers the collective power to refuse dangerous working conditions.

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## CHAPTER THREE: THE STATUTORY FRAMEWORK FOR TRADE UNION FORMATION AND REGISTRATION

### 3.1 The Definition of "Trade Union" in the Bangladesh Labour Act: Doctrinal Analysis

The Bangladesh Labour Act, 2006, as amended by the Bangladesh Labour (Amendment) Ordinance, 2025 and subsequently enacted as the Bangladesh Labour (Amendment) Act, 2026, defines a trade union in Chapter XIII in terms that reflect both the traditional common law understanding of such organizations and the modifications introduced by successive legislative interventions. The amended definition, introduced by the 2025 Ordinance, is significant in several respects that deserve careful doctrinal analysis.

Prior to the 2025 amendment, the BLA defined a trade union as an association or combination of workers whose principal objects include the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers, or the imposition of restrictive conditions on the conduct of any trade or business. This definition tracked the standard definition established by the Trade Union Act 1926, which had governed trade union law throughout the subcontinent and which drew ultimately on the English Trade Union Act 1871. It was a definition shaped by the conceptual framework of nineteenth-century English industrial relations, in which trade unions were understood primarily as combinations in restraint of trade that required special legal authorization to operate lawfully.

The 2025 amendment significantly expanded the definition of "trade union" and the associated definition of "Collective Bargaining Agent" (CBA) to include not only combinations of workers and employers but also "officers of establishments," who may now form unions, associations, federations, and confederations. This expansion is significant because it potentially incorporates into the statutory definition of trade union a category of persons who had previously been excluded from the coverage of the collective labour rights provisions: managerial, administrative, and supervisory employees who occupy ambiguous positions in the organizational hierarchy and whose classification as "workers" for the purposes of the BLA has been a persistent source of doctrinal uncertainty and practical controversy.

The inclusion of "officers of establishments" in the definition of those who may form trade unions also has important implications for the composition and character of trade unionism in Bangladesh. In many countries, the right of managerial and supervisory employees to join trade unions is a contentious question because of the potential conflict of interest between their

managerial responsibilities and their obligations as union members. The ILO's Committee on Freedom of Association has recognized that states have some discretion in determining the scope of the right to organize for managerial employees, provided that any restrictions are limited to those who genuinely exercise managerial authority and are not used to exclude categories of worker who do not in reality exercise such authority. The expanded definition in the 2025 amendment appears to embrace the principle that officers of establishments should have the right to organize, subject to any legitimate restrictions that may be established by subsequent implementing legislation.

The amended definition also now explicitly includes confederations within the definition of entities that can function as Collective Bargaining Agents, a provision that has significant structural implications for the architecture of collective labour relations in Bangladesh. The previous framework, which limited CBA status to individual enterprise-level unions or federations of such unions, was structurally incompatible with the development of sector-wide or industry-level collective bargaining, because it lacked a mechanism by which confederations of unions could directly represent workers in negotiations with employers or employers' associations. The inclusion of confederations in the CBA definition creates at least the legal possibility of developing forms of collective bargaining that operate above the enterprise level, a development that has been strongly advocated by the ILO and by international labour law scholars as an important mechanism for reducing inequality and improving the representativeness of collective bargaining outcomes.

The prohibition of "blacklisting," which is now explicitly defined and prohibited in the 2025 amendment and declared an "unfair labour practice" if used to harass or deprive workers after termination, represents another important doctrinal development. The practice of blacklisting, by which employers share information about workers who have engaged in union activity with other employers in the same industry or area, effectively extending the punishment for union activity beyond the immediate employment relationship and making it difficult or impossible for an active unionist to find new employment, has been a persistent and deeply destructive feature of labour relations in Bangladesh's garment industry. The definition and prohibition of blacklisting in the amended law, combined with the creation of enforcement mechanisms including the power of the Director General to order compensation for affected workers, represents a significant advance in the legal protection of trade union activists.

### 3.2 The Registration Requirements: The Architecture of the 2025 Reforms

The reform of trade union registration requirements was one of the most politically contentious and practically significant elements of the 2025 amendment process. The previous requirement that a trade union must have the support of at least 20 percent of the workforce of an establishment before it can be registered was a provision that had been consistently identified by the ILO's Committee on Freedom of Association as incompatible with the standards established by Convention No. 87. The CEACR had repeatedly observed, in its annual reports on Bangladesh's compliance with Convention No. 87, that a mandatory support threshold of 20 percent or more before a union can be registered is excessive and constitutes an unreasonable restriction on the right of workers to form organizations of their own choosing.

The replacement of the percentage-based threshold with a tiered fixed-number system, as introduced by the 2025 Ordinance and enacted into permanent law in 2026, represents a significant reform, though one that has been criticized from multiple directions. The new system establishes the following thresholds for trade union registration:

For establishments with a workforce of up to 300 workers: a minimum of 20 workers must apply for registration.

For establishments with a workforce of 301 to 500 workers: a minimum of 40 workers must apply.

For establishments with a workforce of 501 to 1,500 workers: a minimum of 100 workers.

For establishments with a workforce of 1,501 to 3,000 workers: a minimum of 300 workers.

For establishments with a workforce of more than 3,000 workers: a minimum of 400 workers.

This tiered system is designed to ensure that unions in smaller establishments are easier to form while maintaining some threshold requirement for larger enterprises. The system represents a genuine improvement over the previous flat percentage requirement: in a factory of 300 workers, the previous threshold of 20 percent would require 60 union members, while the new system requires only 20. In a factory of 500 workers, the previous threshold would require 100 members while the new system requires 40. The reduction in the threshold requirements is real and significant.

However, the reform has been criticized from several perspectives. From the workers' rights perspective, labor organizations including IndustriALL, the global union federation, and the Solidarity Center have argued that even the reduced thresholds remain excessive by the standards of Convention No. 87. The ILO's Committee on Freedom of Association has consistently held that the law should not impose excessive membership requirements on trade unions and that any such requirements must not be so high as to impede the formation of organizations. Whether the new tiered thresholds meet this standard is a question that will inevitably come before the ILO's supervisory bodies as part of the ongoing monitoring of Bangladesh's compliance with Convention No. 87.

From the employers' perspective, represented particularly vocally by the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), the reformed thresholds have been attacked as insufficiently sensitive to the operational realities of the garment industry. BKMEA President Mohammad Hatem has argued, in statements made in April 2026, that the new thresholds could lead to a proliferation of small, fragmented unions that would destabilize factory-level industrial relations without providing effective worker representation, and has called for a reconsideration of the provisions in consultation with employer associations. This employer opposition reflects the deep structural resistance to genuine trade union rights in the garment industry that has characterized Bangladeshi industrial relations for decades.

From a comparative law perspective, the new Bangladeshi thresholds are still relatively high compared to international practice. In the United Kingdom, there is no statutory minimum membership requirement for trade union registration; any group of workers, however small, can form a registered trade union. In India, the Trade Unions Act originally required a minimum of seven workers to form a union, though subsequent amendments have modified this in various states. In Germany, the law imposes no numerical threshold but requires that a union be "powerful enough to exert social pressure," a standard that has been interpreted generously by the Federal Labour Court. The international comparative evidence thus suggests that even the reformed Bangladeshi thresholds represent a more restrictive approach to trade union formation than prevails in many comparable jurisdictions.

### 3.3 The Procedure for Registration: Administrative Discretion and the Scope for Abuse

Even when workers can meet the membership threshold for trade union registration, they face a registration procedure that has historically been characterized by excessive administrative discretion, corrupt practice, and employer-influenced delay that effectively negates the formal right to organize. The registration process under the BLA requires workers to submit an application to the Director General of Labour, accompanied by a constitution of the union, a list of members, and various other formal documents. The Director General has a period of sixty days within which to grant or refuse registration, but in practice this period has often been extended or ignored, with applications languishing for months or years without decision.

The grounds on which the Director General can refuse registration are broad and ill-defined, creating scope for the exercise of discretion in ways that reflect political pressure and employer influence rather than objective legal criteria. Grounds for refusal include formal defects in the application, non-compliance with the requirements of the BLA regarding the content of the union's constitution, and the somewhat vague ground that the registration of the union would not be "in the public interest." This last ground, in particular, has provided a basis for politically motivated refusals of registration that bear little relationship to any genuine assessment of the public interest.

The 2025 amendment introduces some important procedural reforms to the registration process. The amendment provides that the Director General or responsible authority will verify registration information through worker lists collected from establishments or through digital and online systems, a change that is designed to reduce the scope for manipulation of the verification process by employers who have historically interfered with the collection of evidence of union membership. The amendment also strengthens the governance requirements for registered unions, requiring that executive and general meetings be conducted in accordance with the union's constitution and that at least one general meeting be held annually.

However, the fundamental problem of administrative discretion in the registration process remains. The reformed law continues to vest broad decision-making powers in the Director General, whose office has historically been vulnerable to political pressure and whose enforcement record has been consistently criticized by the ILO and international monitoring bodies. The 2025 amendment does not fundamentally transform the character of the registration process from an administrative authorization scheme, in which registration is granted as a matter

of official discretion, to a rights-based scheme, in which registration must be granted as a matter of right to any group of workers that meets the objective criteria established by the law. This transformation, which is required by the standards of Convention No. 87 as interpreted by the Committee on Freedom of Association, remains an unfinished item on the reform agenda.

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## CHAPTER FOUR: THE COLLECTIVE BARGAINING AGENT SYSTEM AND ITS DISCONTENTS

### 4.1 The Legal Architecture of the Collective Bargaining Agent

The most distinctive and in many respects most problematic feature of Bangladesh's collective bargaining framework is the Collective Bargaining Agent (CBA) system, which determines which union, in cases where multiple unions exist in a single establishment, is entitled to negotiate collective agreements on behalf of all workers in that establishment. The CBA system is modeled on the American model of exclusive representation established by the National Labor Relations Act of 1935 (the Wagner Act) and is characteristic of the Anglo-American approach to collective bargaining, which favors simplicity and clear lines of representational authority over the pluralist continental models that accommodate the simultaneous existence of multiple recognized unions.

Under the CBA framework as established by the BLA and modified by the 2025 amendment, the Collective Bargaining Agent is the trade union or federation of trade unions that is recognized as the exclusive representative of workers in a particular establishment for the purposes of collective bargaining. In establishments where only one registered trade union exists, that union automatically assumes CBA status. In establishments where multiple registered trade unions exist, CBA status is determined by a secret ballot election in which all workers in the establishment vote. The union that receives a majority of valid votes cast in the election becomes the CBA and is entitled to negotiate collectively on behalf of all workers, including those who are not members of, or who voted against, the victorious union.

The 2025 amendment introduces an important modification to the CBA system by increasing the maximum number of trade unions that can exist simultaneously in a single establishment from three to five. This change responds to a genuine problem in the previous framework: the three-union maximum could be used by employers to manage and dilute union representation by encouraging the formation of employer-friendly unions up to the legal limit, thereby preventing genuinely independent and representative unions from forming. By increasing the maximum to five, the amendment creates somewhat more space for genuinely competitive and pluralist union organization at the enterprise level.

The CBA system has been the subject of sustained theoretical and practical criticism from multiple perspectives. From the perspective of democratic theory, the exclusive representation model is justified on the ground that it produces clear, accountable, and efficient collective bargaining: a single representative bargains for all workers, and all workers know who speaks for them. But this justification assumes that the election process through which CBA status is

determined is itself genuinely democratic and free from manipulation, an assumption that the Bangladeshi evidence consistently undermines. CBA elections in Bangladesh have been characterized by extensive interference by employers supporting preferred unions, intimidation of workers who support genuinely independent organizations, and manipulation of the voter rolls to exclude or include particular categories of workers in ways that favor specific outcomes. The formal mechanism of democratic election has thus in practice often produced outcomes that do not reflect the genuine preferences of the workforce.

From the perspective of ILO standards, the exclusive representation model as applied in Bangladesh raises questions about compliance with the requirements of Convention No. 87 regarding the rights of organizations to determine their own governance and to formulate their own programs. The CFA has recognized that exclusive representation systems are not inherently incompatible with Convention No. 87, provided that the system includes adequate safeguards: that the exclusive representative is freely chosen by workers, that minority unions retain the right to represent their members' individual interests, and that the exclusive representative genuinely represents the interests of all workers rather than functioning as an employer-friendly body. These conditions are frequently not met in practice in Bangladesh.

The most significant criticism of the CBA system from the perspective of promoting effective collective bargaining in Bangladesh is that it is structurally oriented toward enterprise-level bargaining in a labour market where enterprise-level bargaining is particularly inadequate to protect workers' interests. In the RMG sector, where thousands of factories compete in a global market determined by the decisions of a small number of international buyers, enterprise-level bargaining cannot address the systemic issues of wage levels, working conditions, and industrial safety that are determined as much by the structure of global value chains as by the decisions of individual employers. The development of sector-level or industry-level bargaining mechanisms, which would require collective institutions operating at a higher level than the individual enterprise, is an urgent reform priority that the existing CBA system does not facilitate and in some respects actively obstructs.

As of April 2026, IndustriALL has reported that not a single collective bargaining agreement was active or concluded in Bangladesh's ready-made garments sector during the relevant reporting period. This extraordinary finding, which reflects the structural failure of the collective bargaining system rather than merely procedural or administrative deficiencies, is the most damning indictment of the system's practical effectiveness and provides the most powerful argument for comprehensive structural reform.

### 4.2 Participation Committees: The Ersatz Alternative to Genuine Collective Bargaining

The Participation Committee system, established by Chapter XIV-A of the BLA, is presented in the legislation as a complementary mechanism to trade union collective bargaining, providing for worker participation in workplace governance through committees that operate at the enterprise level and include representatives of both workers and employers. In practice, however, the Participation Committee system has frequently functioned as an alternative and substitute for genuine collective bargaining rather than as a complement to it, and its relationship to the trade union framework has been a persistent source of controversy and doctrinal uncertainty.

The BLA requires the establishment of Participation Committees in all establishments employing fifty or more workers, and these committees are given a range of functions including the improvement of productivity, the maintenance of discipline, the promotion of occupational health and safety, and the consideration of workers' welfare. The committees are composed of equal numbers of worker representatives, selected through a process specified in the legislation, and employer representatives nominated by management.

The fundamental problem with the Participation Committee system, from the perspective of collective labour rights, is that it creates an institutional structure for worker-management consultation that operates outside the trade union framework and potentially in competition with genuine trade union representation. In establishments where a trade union exists and has CBA status, the Participation Committee is legally required to coordinate with the union, but the mechanisms for this coordination are ill-defined and the potential for the committee to be used by the employer to bypass the union in communicating with workers is considerable. In establishments where no union has been formed or where union formation has been successfully prevented by employer resistance, the Participation Committee becomes the sole institutional vehicle for any form of worker voice, and in this role it is a very poor substitute for genuine collective bargaining: it has no power to negotiate binding agreements on wages, no right to call or threaten industrial action, and no independence from employer control since management appoints its own representatives and retains ultimate authority over the committee's decisions.

The ILO has consistently emphasized that Participation Committees are not a substitute for trade union representation and that states that use the Participation Committee model as an alternative to genuine union representation violate their obligations under Conventions 87 and 98. The CEACR has made this point repeatedly in its observations on Bangladesh, and the Committee on Freedom of Association has examined specific cases in which Bangladeshi employers have used Participation Committees to undermine trade union organizing. The persistence of the Participation Committee model as an alternative to genuine unionism in Bangladesh reflects the structural interests of employers in maintaining a form of worker representation that is controllable and predictable, and the state's interest in managing industrial relations in ways that prevent disruption of export-oriented production.

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## CHAPTER FIVE: ANTI-UNION DISCRIMINATION AND UNFAIR LABOUR PRACTICES

### 5.1 The Concept and Categories of Anti-Union Discrimination

Anti-union discrimination is the practice by which employers penalize workers for exercising their rights to form and join trade unions, to participate in trade union activities, or to engage in protected collective action. The prohibition of anti-union discrimination is central to the ILO's framework of collective labour rights: Article 1 of Convention No. 98 requires that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and in particular against acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership,

and against acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or participation in union activities.

The Amnesty International report "Stitched Up: Denial of Freedom of Association for Garment Workers in Bangladesh, India, Pakistan and Sri Lanka," published in November 2025 and based on research carried out between September 2023 and August 2024, provides a comprehensive and thoroughly documented account of the forms of anti-union discrimination prevailing in Bangladesh's garment sector. The report identifies four core strategies of suppression deployed by employers in the sector: union busting through harassment, intimidation, and dismissal of union organizers; factory retaliation when workers attempt to unionize; obstacles to striking, particularly through criminalization of peaceful protests; and replacement of independent unions with management-friendly bodies that purport to represent workers while actually serving employer interests.

The dismissal of union organizers is the most common and most effective form of anti-union discrimination in Bangladesh's garment industry. Workers who attempt to organize unions frequently find themselves dismissed within days or weeks of initiating the organizing process, before they have been able to gather the signatures or membership commitments required for registration. The dismissal is typically presented as a disciplinary action for some alleged violation of workplace rules, providing the employer with a formal justification that makes the anti-union motivation difficult to establish in legal proceedings. The targeted nature of the dismissals, which consistently focus on the most active organizers, makes the anti-union intent apparent to informed observers but creates legal difficulties for workers seeking to challenge the dismissal before the labour courts.

The 2025 amendment introduces strengthened provisions against anti-union discrimination that, if effectively enforced, would represent a significant advance on the previous legal framework. The amendment provides that employers will be prohibited from blacklisting workers or trade union members, establishing trade unions under employer control, or providing financial or other support to influence trade union activities. Employers are also barred from encouraging the formation of rival unions, dismissing union leaders in a discriminatory manner, or taking retaliatory actions against workers for filing complaints, participating in legal proceedings, or reporting unfair labour practices. A new provision, Section 196(Ka), empowers the Director General to order cessation of discriminatory practices and to award financial compensation to affected workers if losses occur.

These new provisions address, at the level of formal law, some of the most egregious and systematic forms of anti-union discrimination. The prohibition of employer-controlled unions ("yellow unions") is particularly significant, since the creation and support of such unions has been one of the most effective employer strategies for preventing genuine independent trade unionism. The concept of a "yellow union" or employer-dominated union refers to a worker organization that is controlled by the employer, either through direct financial support, management direction of union leadership selection, or the creation of an organizational culture of deference to management preferences, and that serves primarily as a mechanism for managing worker discontent rather than representing workers' genuine interests in an adversarial relationship with management.

## 5.2 The Theory and Practice of Employer Dominance in Bangladeshi Trade Unions

The phenomenon of employer dominance in Bangladeshi trade unions takes several distinct forms, each of which reflects a different strategy by which employers seek to neutralize the potential threat that genuine independent unionism represents. Understanding these strategies requires both empirical analysis of documented practices and theoretical frameworks for understanding the organizational dynamics of union-employer relations.

The most direct form of employer dominance involves the creation, financing, and direction of a nominally independent union by the employer or by management-aligned individuals. In the garment sector, this practice has been documented extensively by researchers including Taslima Akter and Naila Kabeer, who have shown that many of the registered trade unions in the sector are in reality employer-controlled organizations whose leadership consists of management personnel or individuals whose union activities are entirely compatible with management preferences. These "yellow unions," as they are described in the international literature, formally satisfy the legal requirements for registration as independent unions while in practice serving as mechanisms for managing and controlling worker discontent.

A second form of employer dominance involves the capture of nominally independent unions through systematic corruption. Trade union leaders in Bangladesh, who typically receive no salary from their union and must therefore maintain their employment with the factory whose workers they represent, are structurally vulnerable to employer co-optation through the provision of economic benefits: continued employment security, promotion, better working conditions, or cash payments. This vulnerability is compounded by the absence of meaningful institutional support for trade union leaders from their parent federations or from state institutions, and by the severe power imbalance between an individual union leader and the management of a large factory.

A third form of employer dominance that is less direct but no less effective involves the strategic management of the Participation Committee system to provide workers with a nominal voice in workplace governance while ensuring that this voice is never exercised in ways that threaten management prerogatives. Employers who are sophisticated in their management of industrial relations have learned to use the Participation Committee as a safety valve for worker discontent, acknowledging minor grievances and making marginal concessions through the committee process while resisting any development of independent union organization that would give workers a genuinely autonomous collective voice.

The empirical evidence on the prevalence of genuine versus employer-dominated unions in Bangladesh is difficult to obtain with precision, given the incentives for all parties to misrepresent the actual character of their relationships. However, the evidence available from multiple sources is consistent in suggesting that genuinely independent and effective trade unionism remains a marginal phenomenon in Bangladesh's formal industrial sector, and that the large majority of the thousands of registered trade unions that appear in official statistics are either dormant, employer-dominated, or too small and weak to exercise any meaningful collective power.

### 5.3 The Role of the Director General and Labour Inspection in Combating Anti-Union Discrimination

The institutional responsibility for combating anti-union discrimination under the BLA framework rests primarily with the Director General of Labour, who has powers under the amended Act to investigate complaints, order cessation of discriminatory practices, and award compensation to affected workers. The effectiveness of these institutional mechanisms depends critically on the capacity, independence, and political will of the Director General's office, all of which have been seriously questioned in the consistent findings of ILO monitoring bodies and international labour rights organizations.

The IndustriALL report released in April 2026, reviewing Bangladesh's compliance with the ILO Roadmap during 2025, is particularly damning in its assessment of the enforcement of anti-union discrimination provisions. The report notes that employers are "allegedly actively promoting yellow unions, company-friendly bodies designed to crowd out genuine worker representation" and that "not a single collective bargaining agreement was active or concluded during the reporting period" in the garment sector. These findings, if accurate, indicate that the formal prohibition of anti-union discrimination and the new enforcement powers introduced by the 2025 amendment have not, at least in the immediate period following their enactment, produced meaningful improvements in the actual conditions of union representation in Bangladesh's largest export industry.

The Department of Labour's inspection capacity is recognized by all observers as wholly inadequate for the task of monitoring compliance with labour standards, including anti-union discrimination provisions, across Bangladesh's vast and dispersed industrial sector. IndustriALL has previously raised "serious doubts about the credibility of the government's inspection statistics, questioning whether 441 inspectors could meaningfully conduct the 85 daily inspections the government claimed." The April 2026 report notes that 1,190 workers were killed in workplace accidents in 2025, up from 905 the year before, a finding that suggests a deterioration rather than an improvement in workplace safety standards despite the formal legislative advances of the reform cycle.

The enforcement deficit in Bangladeshi labour law, which is particularly acute in the domain of collective labour rights, reflects structural rather than merely administrative failures. The Director General's office is underfunded, understaffed, and politically exposed: its officials operate in a political environment in which employer associations are well-connected and politically influential, in which the RMG sector is treated as a national economic priority whose stability must be protected, and in which officials who take seriously the task of enforcing trade union rights against politically connected employers may face professional consequences. The transformation of the enforcement apparatus from a politically dependent administrative body into a genuinely autonomous and effective regulator requires changes that go beyond the formal legal framework: it requires adequate budgetary resources, institutional independence, professional development of inspectors, and a political culture that treats the enforcement of workers' rights as a genuine priority rather than as a compliance performance.

# CHAPTER SIX: THE RIGHT TO COLLECTIVE BARGAINING AND ITS SUBSTANTIVE DIMENSIONS

## 6.1 The Theory of Collective Bargaining: From Contract to Governance

Collective bargaining is not simply a process by which wages and working conditions are negotiated between employers and representatives of workers. It is, at its deepest level, a form of industrial governance: a mechanism through which the rules that govern the conditions of working life are determined through a process of negotiated agreement rather than either unilateral employer determination or state prescription. This governance function of collective bargaining has been theorized in different ways by different scholarly traditions, but all serious accounts converge on the recognition that collective bargaining is not simply an economic transaction but a political institution with implications for the distribution of power and the exercise of authority in the workplace.

Hugo Sinzheimer's classical analysis of the collective agreement as a "legislative" act, which he developed in the context of Weimar Republic industrial relations theory, emphasizes the rule-making character of collective bargaining: the collective agreement does not merely record a bilateral contract between two parties but creates objective legal norms that govern the employment relationships of all workers covered by its terms, including non-union members. Otto Kahn-Freund's later development of Sinzheimer's insights, in the context of British industrial relations, emphasized the "normative" function of collective agreements and the way in which they create a system of "industrial rule-making" that supplements and in some respects displaces the rules created by individual employment contracts.

The distinction between "integrative" and "distributive" bargaining, drawn from the foundational study by Walton and McKersie, "A Behavioral Theory of Labor Negotiations" (1965), remains important for understanding the dynamics of collective bargaining in Bangladesh. Distributive bargaining focuses on the division of a fixed resource, typically wages: it is zero-sum in character, in the sense that a gain for workers is a loss for employers and vice versa. Integrative bargaining focuses on the identification of issues where mutual gains are possible: improving productivity, reducing absenteeism, improving workplace safety, and developing human capital are all areas where employer and worker interests may be aligned rather than opposed. A mature system of collective bargaining incorporates both distributive and integrative elements, and the development of trust and communication between union and management that is necessary for effective integrative bargaining can improve the overall efficiency of the industrial relations system even from a purely economic perspective.

In the Bangladeshi context, where collective bargaining is almost entirely absent in the formal sense, the distinction between distributive and integrative bargaining has largely theoretical significance. The absence of genuine collective bargaining means that wages in the garment sector are determined primarily by the minimum wage orders issued by the Minimum Wage Board, which represents a form of statutory determination rather than genuine negotiation. Working conditions are determined primarily by the employer's unilateral decision, subject to the statutory minimum standards established by the BLA. The development of a genuine collective bargaining culture in Bangladesh would require not merely the formal legal mechanisms

established by the amended BLA but a profound transformation of management culture, of workers' organizational capacity, and of the institutional infrastructure of industrial relations.

### 6.2 The Subject Matter of Collective Bargaining: Legal Limits and Practical Scope

Under the BLA framework, a CBA is entitled to negotiate with the employer on behalf of workers on a range of matters defined by the legislation. The framework establishes a distinction, familiar from American labour law, between mandatory subjects of bargaining, on which the employer is legally required to bargain in good faith with the CBA, and permissive subjects, on which bargaining may occur by mutual agreement but cannot be insisted upon by either party. The mandatory subjects of bargaining under the BLA include wages, hours of work, leave entitlements, and other conditions of employment that are subject to the minimum standards established by the Act.

However, the BLA framework does not impose a comprehensive duty to bargain in good faith, in the sense developed by American labour law jurisprudence through the National Labor Relations Act. The NLRA's duty to bargain in good faith, which was developed through decades of NLRB and court decisions into a detailed and enforceable legal standard, requires not merely that the parties meet and confer but that they engage in genuine, substantive negotiation with a genuine intent to reach agreement. The absence of an equivalent duty in the BLA creates significant scope for employers to engage in the appearance of bargaining while effectively refusing to make any concessions, a phenomenon that has been observed in the limited number of cases where formal collective bargaining has been attempted in Bangladesh.

The question of what subjects are within the mandatory scope of bargaining is also significantly more limited in the Bangladeshi framework than in comparable systems. In particular, the BLA does not clearly require employers to bargain over issues of organizational structure, management prerogatives, or the deployment of technology, all of which can have profound implications for workers' interests but which are treated by many employers as exclusively management decisions beyond the scope of union negotiation. This limitation on the subject matter of bargaining reflects the historical influence of a managerial rights doctrine that reserves to management unilateral authority over the fundamental decisions about how the enterprise is organized and operated.

### 6.3 The Collective Agreement: Legal Status, Enforceability, and Coverage

A collective agreement negotiated by a CBA with an employer has legal force under the BLA as a binding instrument that supplements and, where favorable to workers, overrides the provisions of individual employment contracts. This principle, that collective agreements override individual contracts to the extent that the collective terms are more favorable, is one of the most important doctrinal features of collective labour law and reflects the fundamental policy choice to protect workers from the unequal bargaining that characterizes individual negotiation with a more powerful employer.

The coverage of collective agreements in Bangladesh is, however, structurally limited by the enterprise-level character of the CBA system. A collective agreement between a CBA and an

employer in a single factory is legally binding only on that factory and its workers; it has no normative effect on other factories in the same industry or on workers employed by subcontractors, piece-rate workers, or other forms of contingent labour. This structural limitation is particularly acute in the garment sector, where the organization of production through elaborate subcontracting networks and the deliberate use of multiple corporate entities to fragment workforces means that enterprise-level collective agreements, even when successfully negotiated, cover only a fraction of the workers whose interests are at stake.

The development of multi-employer or industry-wide collective bargaining, which would overcome the structural limitations of enterprise-level agreements, faces formidable legal and institutional obstacles under the current framework. The BLA does not provide a legal mechanism for multi-employer collective bargaining in the private sector: there is no provision for the certification of bargaining units that span multiple enterprises, no mechanism for extending collective agreements to employers who are not direct parties to the negotiation, and no legal requirement that employers' associations engage in collective bargaining with trade union federations or confederations at the industry level. The 2025 amendment's inclusion of confederations within the definition of CBA creates a legal opening for more comprehensive collective bargaining arrangements, but the institutional infrastructure for such arrangements does not yet exist and will require sustained effort to develop.

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## CHAPTER SEVEN: THE RIGHT TO STRIKE IN THEORY AND LAW

### 7.1 The Philosophical Foundations of the Right to Strike

The right to strike is, in the words of the philosopher and labour law theorist Virginia Mantouvalou, "the most powerful weapon available to workers in the struggle against exploitation and the assertion of their dignity as equal participants in the social life of the workplace and the economy." This description captures both the central importance of the right to strike and the reason why it has been so persistently and bitterly contested: it is powerful precisely because it gives workers a means of coercing employers that transcends the ordinary market constraints on their individual bargaining power, and it is therefore perceived by employers as a fundamental threat to their authority and their ability to determine unilaterally the conditions of production.

The philosophical case for the right to strike rests on several distinct but interconnected arguments. The first argument is grounded in the logic of collective bargaining itself: if collective bargaining is to be genuinely voluntary rather than merely a formal ritual in which the employer can refuse all worker demands without consequence, then workers must have a credible threat to withdraw their labour. The right to strike is, on this account, the sanction that makes collective bargaining meaningful: without the capacity to strike, workers have no practical means of imposing costs on employers who refuse to make reasonable concessions in collective bargaining, and the "bargaining" that occurs is therefore not genuine negotiation but a one-sided process in which the employer's opening position is also its final position.

The second argument grounds the right to strike in the principle of equality of power that is necessary for genuine freedom of contract. If the employment relationship is to be governed by voluntary agreement rather than by the employer's unilateral determination, then the parties to the agreement must have roughly equal power to walk away from an unsatisfactory deal. The employer's power to withhold employment is the fundamental coercive power in the labour market; the workers' power to withhold their labour collectively, through a strike, is the counterpart and potential equalizer of this power. Without the right to strike, the formal equality of the parties to the employment contract is a legal fiction that conceals and legitimates a profound substantive inequality.

The third argument, particularly associated with the republican tradition, grounds the right to strike in the principle of non-domination. Workers who lack the right to strike are, in the republican sense, dominated: they are subject to the employer's unilateral determination of the conditions of their working lives, and they cannot effectively contest or resist that determination. The right to strike is a constitutive element of the worker's status as a non-dominated person, free from arbitrary interference and capable of effective agency in the conditions of their working life.

### 7.2 The ILO and the Right to Strike: The ICJ Advisory Opinion Proceedings

The question of whether the right to strike is protected by ILO Convention No. 87 reached an unprecedented level of legal and institutional salience in October 2025, when the International Court of Justice held three days of public hearings on the question at the Peace Palace in The Hague. The ILO's Governing Body had requested the advisory opinion in response to the longstanding and bitter dispute within the ILO's supervisory system about whether Convention No. 87's protection of workers' right to "organize their activities and to formulate their programmes" (Article 3) encompasses a right to strike.

The dispute began in earnest at the 2012 session of the International Labour Conference, when the employer group on the Committee of Experts challenged the CEACR's longstanding interpretation that the right to strike is an "intrinsic corollary" of the right to organize protected by Convention No. 87. The employer group's argument was that Convention No. 87 is textually silent on the right to strike, that the drafting history of the Convention does not establish any intention to protect the right to strike, and that the CEACR's interpretation therefore exceeds its mandate and amounts to an amendment of the Convention's text without the consent of member states. This argument, supported by certain governments and by the International Organisation of Employers (IOE), led to a series of confrontations within the ILO's supervisory system that eventually paralyzed the system's normal functioning.

The workers' organizations, particularly the International Trade Union Confederation (ITUC), responded with the argument that the right to strike is inherent in the concept of freedom of association and is necessary for the effective exercise of the rights guaranteed by Convention No. 87. The ITUC's position, elaborated in detailed written submissions to the ICJ, is that "the right to strike exists as part of the fundamental principles and rights at work in the ILO, specifically freedom of association, as set out in the ILO's Constitution" and that the right to strike is "an inherent and central part of the right of workers and their trade unions to organize under

Convention No. 87." The ITUC's argument invoked the principle of ubi jus ibi remedium, the legal maxim that where there is a right there must be a remedy, to argue that the right to strike is the necessary remedy for the violation of collective bargaining rights and is therefore implicit in the Convention's protection of freedom of association.

The ICJ hearings of 6-8 October 2025 saw submissions from numerous governments, the ILO itself, and amicus participants. The ILO's own written submission adopted a careful position, describing its tripartite procedures without directly advocating for a particular interpretation. Several governments argued in favour of interpreting Convention No. 87 as protecting the right to strike, while others, particularly those with restrictive strike laws, argued against. The advisory opinion of the ICJ, expected sometime in 2026, will carry significant persuasive authority within the ILO system and in domestic legal systems that look to ICJ opinions for guidance on questions of international law. While ICJ advisory opinions are not technically binding, they carry enormous legal weight and are typically treated as authoritative statements of international law by states, courts, and international institutions.

For Bangladesh, the ICJ advisory opinion will have direct relevance to the assessment of the existing legal restrictions on the right to strike under the BLA and to the prospects for reform. If the ICJ affirms the CEACR's interpretation that Convention No. 87 protects the right to strike, Bangladesh's extensive restrictions on industrial action will be subject to heightened ILO scrutiny and international pressure. If the ICJ takes a more restrictive view, the pressure for reform of Bangladesh's strike law may be somewhat reduced in the international law dimension, though the domestic constitutional and human rights arguments for a robust right to strike would remain intact.

### 7.3 The Statutory Regulation of Strikes in Bangladesh: A Doctrinal Analysis

The BLA's regulation of the right to strike is one of the most extensively restricted and procedurally complex aspects of the Act, reflecting the longstanding policy preference of both colonial and post-colonial governments for managing industrial conflict through administrative and legal controls rather than allowing it to be resolved through the free exercise of collective power. The restrictions on the right to strike in the BLA are numerous, overlapping, and in some cases so restrictive as to render the legal right to strike practically meaningless in the sectors and circumstances where strike action would be most effective.

The general framework of the BLA's strike provisions begins with the fundamental principle that workers in certain categories of establishment are prohibited entirely from striking. Section 211 of the BLA provides that strikes are prohibited in establishments that are specified by the government as "essential services," a category that the government has been constitutionally authorized to define broadly. The designation of establishments as essential services has historically been used in Bangladesh, as in many other countries, to extend strike prohibitions well beyond the core of services whose interruption would genuinely threaten public safety or health. The garment export industry, which the government treats as a national economic priority, has been effectively subjected to strike restrictions through various administrative and legal mechanisms even though it is not a "public utility service" in any conventional sense.

Even in establishments not designated as essential services, the right to strike under the BLA is hedged with extensive procedural requirements. Before calling a lawful strike, workers must comply with a mandatory notice requirement, serve written notice of the intended strike on the employer and on the conciliation officer, and engage in mandatory conciliation proceedings before the conciliation officer. The conciliation proceedings can extend for a period of up to thirty days, during which strike action is unlawful. If the conciliation proceedings fail to produce a settlement, the dispute may be referred to an arbitration board, and during the arbitration proceedings the right to strike is again suspended. The cumulative effect of these procedural requirements can delay any lawful strike for sixty or more days after the initial notice, by which time the momentum and organizational capacity for strike action may have been dissipated.

The BLA also imposes restrictions on the subjects over which a lawful strike can be called. A strike must concern a "trade dispute" as defined by the Act, and actions that do not fall within this definition are unlawful regardless of the notice requirements. The definition of "trade dispute" is relatively broad but has been interpreted by the courts in ways that exclude certain forms of politically motivated or sympathetically motivated industrial action. "Sympathy strikes" and "solidarity strikes," in which workers in one establishment strike in support of workers in another establishment, are generally unlawful under the BLA framework, a restriction that significantly limits the strategic repertoire available to the trade union movement and reduces the ability of workers in different establishments to engage in coordinated industrial action.

The penalties for unlawful strike action under the BLA are severe. Workers who participate in an unlawful strike may be summarily dismissed, and the employer is not required to pay wages for the period of the strike. Union leaders who call or organize an unlawful strike may face criminal prosecution. In practice, the criminal prosecution of union leaders for calling strikes has been a significant mechanism of political repression of the labour movement in Bangladesh, with criminal charges under the BLA and under general criminal law provisions being used against labour organizers in contexts that go well beyond the narrow legal definition of unlawful industrial action.

The right to lock out, which is the employer's counterpart to the workers' right to strike, is regulated by the BLA in ways that are broadly symmetrical with the strike provisions but which in practice favor employers. The employer's right to lock out is subject to the same procedural requirements and restrictions as the workers' right to strike, but in a context of power imbalance where employers have significantly more financial resources to sustain a lock-out than workers have to sustain a strike, the formal symmetry of the legal treatment conceals a substantive asymmetry in practical capacity.

### 7.4 Essential Services, Restrictions, and Constitutional Standards

The constitutional validity of restrictions on the right to strike in Bangladesh is a question that has received surprisingly little direct judicial attention, given the importance of the issue and the extensive nature of the restrictions. The constitutional guarantee of freedom of association in Article 38 is subject to "any reasonable restrictions imposed by law in the interests of morality or public order," and the BLA's restrictions on the right to strike would need to be justified under this constitutional standard if they were challenged before the superior courts.

The framework for constitutional review of restrictions on fundamental rights in Bangladesh, developed through a series of High Court Division and Appellate Division decisions, requires that restrictions must be proportionate to the legitimate aim pursued and must not defeat the substance of the fundamental right. Applied to the BLA's strike restrictions, this framework would raise serious constitutional questions about provisions that effectively render the right to strike practically worthless in the sectors where it is most needed. A constitutional challenge to the most extreme restrictions on the right to strike, particularly the prohibition on strikes in the garment industry and the extensive procedural requirements that make lawful strike action virtually impossible in practice, would be a significant legal and political event with potentially transformative implications.

No such direct constitutional challenge has yet been mounted, and the reasons for this absence are instructive. Workers who are considering strike action are in an economically precarious position that makes legal challenge risky and expensive; trade unions in Bangladesh lack the organizational capacity and financial resources to support sustained constitutional litigation; and the legal profession has not developed the specialization in collective labour law litigation that would enable advocacy organizations to identify and pursue strategic constitutional test cases. The development of a strategic litigation capacity in the field of collective labour rights, drawing on the experience of public interest litigation in India and South Africa, is an important medium-term agenda item for the Bangladeshi labour movement and its civil society allies.

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## CHAPTER EIGHT: EXPORT PROCESSING ZONES AND THE LABOUR EXCEPTIONALISM PROBLEM

### 8.1 The Legal Regime of the EPZs: Exclusion, Exception, and Its Justification

The Export Processing Zones (EPZs) of Bangladesh, which are administered by the Bangladesh Export Processing Zones Authority (BEPZA) under the Bangladesh Export Processing Zones Authority Act, 1980, and which operate under a separate labour relations regime established by the EPZ Workers Welfare Association and Industrial Relations Act, 2010 (as amended), represent the most explicit and most severe instance of the labour exceptionalism that has characterized Bangladesh's approach to labour regulation in its export-oriented industrial sector. The EPZ labour regime has been characterized by academic researchers, ILO monitoring bodies, and international human rights organizations as one of the most serious violations of ILO standards on freedom of association and collective bargaining in the world, and its existence and maintenance provides perhaps the clearest illustration of the structural subordination of workers' rights to the perceived requirements of export-led development in Bangladesh's political economy.

The essential feature of the EPZ labour regime is the exclusion of workers employed in EPZ enterprises from the protections of the BLA's collective labour rights provisions. Workers in EPZs are not permitted to form trade unions in the conventional sense; instead, they are permitted to form "Workers' Welfare Associations" (WWAs) under the EPZ Workers Welfare Association Act, which are granted limited rights to negotiate with management on welfare

matters but are explicitly denied the right to collectively bargain over wages and core conditions of employment in the way that a recognized CBA in the mainstream sector can. The right to strike in EPZs is heavily restricted, with mandatory dispute resolution procedures that effectively prevent lawful industrial action in most circumstances.

The theoretical justification for this labour exceptionalism has been elaborated most fully by the BEPZA itself and by the state institutions responsible for EPZ governance. The argument runs as follows: the EPZs attract foreign direct investment by offering investors a stable, low-cost, and predictable production environment. The assurance of stable industrial relations, free from the disruption of strikes and the uncertainty of adversarial collective bargaining, is a key element of the investment climate that the EPZs offer. If full trade union rights were extended to EPZ workers, investors would relocate production to other jurisdictions with more hospitable labour relations regimes, the EPZs would lose their competitive advantage, and Bangladesh would suffer a loss of foreign investment and export earnings that would harm the entire economy, including the workers whose interests trade unions claim to represent.

This argument, which reflects a broader set of claims about the relationship between labour rights and economic development in developing countries, deserves serious analytical attention before being dismissed. The claim that labour rights and export competitiveness are inherently in tension is, however, substantially contested by the economic evidence. Numerous empirical studies of the relationship between labour standards and trade competitiveness in developing countries have found that the relationship is complex and contextually variable: there are circumstances in which stronger labour rights improve productivity, reduce turnover, and enhance the quality of production in ways that can offset their cost implications, and there are circumstances in which the restrictive and exclusionary practices of the EPZ model impose costs on workers that are not matched by corresponding benefits to the broader society.

The ILO's consistent position, which is also the position of the international human rights framework, is that freedom of association and the right to collective bargaining are fundamental human rights that cannot be suspended or curtailed on grounds of economic expediency. The CEACR has repeatedly observed that the EPZ labour regime in Bangladesh is incompatible with the requirements of Convention No. 87, and has called for the extension of full trade union rights to EPZ workers as a matter of international legal obligation. The EU's GSP+ framework and the conditions attached to Bangladesh's preferential trade access to the EU market also require compliance with the fundamental ILO Conventions, including in EPZ zones, and the EU has explicitly identified the EPZ labour regime as an area of concern in its periodic assessments of Bangladesh's GSP+ compliance.

### 8.2 The 2025 Amendment and EPZ Workers: A Partial and Contested Reform

The 2025 amendment to the BLA represents a partial and deeply contested advance in the rights of EPZ workers. The amendment extends the application of Chapters XII, XIII, and XIV of the BLA to EPZ workers with respect to accident compensation, the right to form trade unions, and the right to file cases in labour courts. This extension means that, at least in principle, EPZ workers now have the right to form trade unions under the same legal framework as workers in the mainstream sector, and that disputes involving EPZ workers can be heard by the established

labour court system rather than being restricted to the EPZ-specific dispute resolution mechanisms.

The practical significance of this formal extension of rights is, however, highly uncertain. The amendment does not abolish the BEPZA's separate regulatory regime or the EPZ Workers Welfare Association framework, creating a situation in which two potentially inconsistent bodies of law govern the collective labour relations of EPZ workers. The resolution of this inconsistency will require either further legislative clarification or judicial interpretation that establishes the primacy of either the mainstream BLA framework or the EPZ-specific framework. The BEPZA, which has strongly resisted any extension of mainstream trade union rights to EPZ workers, has reportedly expressed its position that the EPZ framework remains operative for most purposes and that the BLA extension is limited in scope.

The political economy of EPZ labour reform in Bangladesh is shaped by the extraordinary economic importance of the EPZ zones to the country's foreign exchange earnings and by the political influence of the foreign and domestic investors who operate in them. The EPZ zones collectively employ several hundred thousand workers and generate billions of dollars of export revenue annually. The government's calculations about how far to push EPZ labour reform are inevitably influenced by its assessment of the risks to this economic base and by the lobbying of BEPZA and the investors it represents.

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## CHAPTER NINE: THE RIGHT TO STRIKE AND THE ICJ ADVISORY OPINION: IMPLICATIONS FOR BANGLADESH

### 9.1 The Significance of the ICJ Proceedings for Bangladesh

The ICJ advisory opinion proceedings on the right to strike under Convention No. 87, initiated by the ILO Governing Body and culminating in the October 2025 hearings, have implications for Bangladesh's collective labour law that are both direct and indirect. The direct implications concern the specific question of whether the right to strike is protected by Convention No. 87, to which Bangladesh is bound as a ratifying state. If the ICJ affirms the CEACR's longstanding interpretation that the right to strike is an intrinsic corollary of the right to organize, Bangladesh's existing restrictions on industrial action will be explicitly incompatible with its international legal obligations and will face intensified pressure from the ILO's supervisory bodies, from the EU's GSP+ monitoring mechanisms, and from international labour rights organizations.

The indirect implications are arguably even more significant. The ICJ proceedings have elevated the debate about the right to strike from a technical question of treaty interpretation to a matter of general international law, attracting the attention of a broad range of states, international organizations, and civil society actors. The proceedings have also produced an extensive public record of competing legal arguments about the relationship between freedom of association and the right to strike that will be invaluable for domestic legal advocates in Bangladesh who seek to use constitutional litigation or international law arguments to challenge the BLA's strike restrictions.

The ITUC's submissions to the ICJ, which are available as part of the public record of the proceedings, articulate a sophisticated legal argument that deserves careful attention from Bangladeshi labour lawyers and scholars. The ITUC argues that the right to strike is not merely a convenient policy addition to the right to organize but is "an inherent and central part of the right of workers and their trade unions to organize under Convention No. 87." This argument draws on the principle of effectiveness in treaty interpretation, which requires that treaties be interpreted in a way that gives genuine effect to their objects and purposes, and on the systematic analysis of Convention No. 87's objects and purposes as established by its preamble and drafting history.

The employer-side argument, articulated by the IOE and by certain governments, rests primarily on the textual silence of Convention No. 87 regarding the right to strike and on the principle that treaty obligations should not be extended beyond what member states clearly agreed to when they ratified the treaty. This argument has a certain formalistic appeal, but it is in tension with the fundamental principle that international human rights instruments must be interpreted progressively in light of evolving understandings of human rights rather than frozen in their original textual meaning. The Vienna Convention on the Law of Treaties, in Article 31, requires that treaties be interpreted in good faith in accordance with their ordinary meaning in context and in light of their objects and purposes, a principle that the ITUC and the supporting states have argued strongly supports the interpretation that Convention No. 87 protects the right to strike as a necessary corollary of the fundamental right to organize.

### 9.2 The Domestic Implications of a Progressive ICJ Opinion

If the ICJ adopts the broad interpretation of Convention No. 87 that the workers' organizations advocate, the implications for the reform of Bangladesh's strike law would be significant. The advisory opinion would provide a powerful legal foundation for a comprehensive review and reform of the BLA's strike provisions, with the goal of ensuring that the formal right to strike is meaningful rather than nominal. Key reforms that would follow logically from the affirmation of the right to strike as protected under Convention No. 87 include:

The abolition or substantial modification of the essential services designations that exclude workers in the garment industry and other key economic sectors from the right to strike. The CEACR has already held that essential services designations must be strictly limited to services whose interruption would endanger the life, personal safety, or health of the whole or part of the population, and that economic importance is not a legitimate basis for designating an industry as an essential service in which strikes are prohibited.

The reduction and simplification of the procedural requirements for lawful strike action, which currently impose mandatory notice periods, conciliation requirements, and potential arbitration that can delay lawful industrial action for sixty or more days. A proportionate procedural framework would retain some notice requirement and cooling-off period to allow the resolution of disputes without resort to strike action, but would not impose such extensive procedural barriers as to make the right to strike practically worthless.

The abolition of the criminal sanctions for participation in unlawful strikes, or at minimum a significant narrowing of the category of strike activity to which criminal sanctions can apply.

The criminalization of strike action has been consistently identified by the ILO's supervisory bodies as incompatible with the standards of Convention No. 87, and its use as a tool of political repression of labour organizers has been documented extensively by human rights organizations.

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## CHAPTER TEN: CONSTITUTIONAL DIMENSIONS OF COLLECTIVE LABOUR RIGHTS

### 10.1 Article 38 and the Constitutional Protection of Freedom of Association

The constitutional guarantee of freedom of association in Article 38 of the Bangladesh Constitution is the most direct constitutional protection available to trade unions and their members, and it has been the basis for a number of significant judicial decisions that have developed the constitutional law of collective labour rights. However, the interpretation and application of Article 38 in the labour law context has been uneven and in some respects disappointing, reflecting both the institutional limitations of the superior courts in dealing with complex socioeconomic questions and the political sensitivities that surround collective labour rights in a country where the state's development strategy is built around the labour cost advantage of a weakly organized working class.

The text of Article 38 provides that "every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order." This formulation differs from the constitutional protection of freedom of association in some comparable constitutions in several important respects. First, the guarantee is limited to "citizens," which raises a question about whether non-citizen workers in Bangladesh, including the small number of expatriate workers employed in managerial and technical positions, have constitutional protection for their right to organize. Second, the guarantee is subject to restriction in the interests of "morality or public order," a formulation that is potentially broader than the equivalent provisions in many international human rights instruments, which permit restrictions only for specified purposes such as national security or public order, and which require that restrictions be necessary rather than merely reasonable.

The High Court Division has developed a substantial body of case law on the constitutionality of restrictions on trade union rights under Article 38. In several decisions, the Court has held that the administrative discretion of the Director General of Labour in refusing trade union registration must be exercised consistently with the constitutional guarantee of freedom of association, and that refusals of registration that are not based on objective legal criteria are unconstitutional. These decisions are valuable, but their impact on the actual practice of trade union registration has been limited by the difficulties of enforcement and by the tendency of administrative authorities to develop new bases for refusal that are formally within the law while serving the same practical purpose of restricting union organization.

The superior courts have been considerably more reluctant to engage directly with the constitutional validity of the substantive restrictions on collective labour rights in the BLA, including the restrictions on the right to strike and the limitations on the scope of collective

bargaining. This reluctance reflects several factors: the courts' general caution about overturning legislative provisions, particularly in the domain of economic regulation; the doctrinal difficulty of deriving judicially enforceable standards for the content of collective labour rights from the relatively spare text of Article 38; and the political sensitivity of decisions that would directly challenge the labour relations framework of the garment export sector.

### 10.2 The Proportionality Standard and Its Application to Collective Labour Rights

The proportionality standard, which requires that restrictions on fundamental rights be proportionate to the legitimate aim pursued and must not exceed what is necessary to achieve that aim, is increasingly recognized as the appropriate constitutional standard for reviewing restrictions on fundamental rights in Bangladesh. The High Court Division has applied the proportionality standard in a number of contexts, drawing on comparative constitutional law from India, South Africa, the European Court of Human Rights, and the UN Human Rights Committee. The application of the proportionality standard to the BLA's restrictions on collective labour rights would provide a principled basis for distinguishing legitimate restrictions from unjustified restrictions that violate the constitutional guarantee of freedom of association.

The proportionality analysis of the BLA's restrictions on the right to strike would begin with the identification of the legitimate aim of each restriction. The prohibition of strikes in essential services pursues the legitimate aim of protecting public health and safety; the procedural notice requirements pursue the legitimate aim of encouraging the peaceful resolution of disputes; the prohibition of sympathy strikes pursues the aim of limiting the economic disruption caused by industrial action. Having identified the legitimate aim, the proportionality analysis would then ask whether the restriction is suitable for achieving that aim, whether it is necessary (i.e., there is no less restrictive alternative that could achieve the same aim), and whether the restriction is proportionate in the strict sense (i.e., the benefits of the restriction are not outweighed by its costs to the fundamental right).

Applied to Bangladesh's most restrictive strike provisions, a proportionality analysis would find several serious problems. The designation of garment factories as establishments subject to strike restrictions is not proportionate to any legitimate aim of protecting public health or safety, since the garment industry is not in any meaningful sense an essential service. The cumulative procedural requirements that can delay lawful strike action for sixty or more days go well beyond what is necessary to encourage peaceful dispute resolution and effectively deny the substance of the right to strike in a sector where the momentum for strike action typically dissipates over a much shorter period. The criminal sanctions for participating in unlawful strikes are grossly disproportionate to the harm involved in most instances of unlawful strike action, which typically amounts to a breach of procedural requirements rather than a deliberate act of violence or sabotage.

### 10.3 Transformative Constitutionalism and the Future of Collective Labour Rights

The concept of transformative constitutionalism, first articulated by Karl Klare in the South African context, holds that the Constitution is not merely a framework for establishing the basic structures of government and protecting minimum rights but is a transformative instrument that

requires the institutions of law to actively work toward a just social order rather than merely neutralizing the most egregious injustices of the existing order. Applied to the constitutional protection of collective labour rights in Bangladesh, transformative constitutionalism would require the courts to interpret the constitutional guarantee of freedom of association in a way that takes seriously the transformative potential of genuine collective organization for workers who are currently subject to structural domination by employer power.

The transformative constitutionalist approach to collective labour rights would involve several commitments that go beyond the conventional understanding of judicial review as a negative checking function. First, it would require the courts to interpret the constitutional guarantee of freedom of association not merely as a negative right protecting workers from state interference with their organizing activities but as a positive right that imposes obligations on the state to create the conditions under which genuine freedom of association is possible. This positive dimension would include obligations to enforce the anti-discrimination provisions of the BLA effectively, to ensure that the administrative processes for trade union registration are fair and timely, and to develop the institutional infrastructure of collective bargaining.

Second, a transformative constitutionalist approach would require the courts to take seriously the structural context of collective labour rights in Bangladesh, recognizing that the formal right to organize is meaningless without the practical conditions that make effective organization possible, and that those practical conditions are systematically undermined by the power asymmetries of the existing industrial relations system. This recognition would require a more activist and creative approach to remedies than conventional judicial review provides: rather than simply striking down unconstitutional provisions and leaving the legislature to develop alternatives, transformative constitutional adjudication would involve the courts in ongoing dialogue with the political branches and with civil society about the institutional designs that would actually give meaningful content to the constitutional guarantee.

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## CHAPTER ELEVEN: PUBLIC SECTOR COLLECTIVE LABOUR RIGHTS

### 11.1 The Constitutional and Statutory Framework for Public Sector Collective Rights

The collective labour rights of public sector workers in Bangladesh occupy a particularly complex and contested position in the legal framework. Public sector workers, who include employees of the government, public enterprises, statutory bodies, and institutions funded by public money, constitute a large and diverse workforce whose conditions of employment and collective rights are shaped by a combination of statutory law, administrative regulations, and constitutional provisions that differ significantly from the framework applicable to private sector workers.

The BLA itself excludes from its coverage a significant number of categories of public sector worker, including employees of the government, employees of establishments that are part of the civil service, and employees of the armed forces. These exclusions reflect the traditional public law principle that the relationship between the state and its employees is governed by

constitutional and administrative law rather than by the ordinary law of employment, and that the state's role as employer cannot be fully analogized to the role of a private employer subject to the ordinary framework of labour law.

The right of civil servants to organize and to bargain collectively is one of the most contested issues in the international law of freedom of association. Convention No. 87 explicitly extends the right to organize to all workers "without distinction whatsoever," including public servants, but Article 9 of the Convention allows states to determine the extent to which the Convention's guarantees apply to the police and armed forces. Convention No. 98 is more restrictive, excluding from its scope public servants engaged in the administration of the state, though the ILO has urged states to extend collective bargaining rights to this category of workers as well.

In Bangladesh, government employees organized under the Government Servants (Conduct) Rules, 1979 and associated regulations are prohibited from forming associations that engage in activities of a political nature or that could be considered to conflict with their duties as civil servants. The interpretation and enforcement of these provisions have been contested, with some employee associations arguing that the restrictions are incompatible with the constitutional guarantee of freedom of association in Article 38 and with Bangladesh's obligations under Convention No. 87.

### 11.2 Teachers, Doctors, and Nurses: Collective Rights in the Public Services

The collective labour rights of workers in the public services, particularly teachers, doctors, and nurses, have been a recurring source of controversy in Bangladesh, reflecting the tension between the recognized importance of these services to the public interest and the fundamental rights of the workers who provide them. Teachers in public educational institutions, doctors and nurses in public hospitals, and workers in other public services have a strong interest in effective collective representation to address conditions of employment that are frequently characterized by low pay, difficult working conditions, and limited career progression.

The strikes and industrial actions by public sector workers, including the recurring actions by public hospital doctors and nurses, have highlighted the inadequacy of the existing framework for managing collective labour disputes in the public services. The combination of legal restrictions on strike action in essential services, the absence of effective mechanisms for collective bargaining in the public sector, and the political sensitivity of public sector industrial action has created a pattern of periodic crisis in public sector labour relations that is damaging both to workers' interests and to the quality of public service delivery.

The development of an effective framework for collective labour relations in the public sector requires a careful balance between the legitimate interests of public sector workers in effective representation and the legitimate public interest in the continuous provision of essential services. International experience, particularly from the Scandinavian countries which have developed sophisticated systems of collective bargaining in the public sector while maintaining high-quality public services, suggests that this balance is achievable but requires substantial institutional investment and political will.

# CHAPTER TWELVE: THE LABOUR REFORM COMMISSION'S AGENDA FOR COLLECTIVE RIGHTS

## 12.1 The Labour Reform Commission's Report: Key Findings on Collective Rights

The Labour Reform Commission established by the interim government of Bangladesh in November 2024, following the July Revolution, submitted its report to the Chief Adviser on 21 April 2025. The report, which reflected what the Commission's Chair AKM Nasim described as "unanimous consensus among employers, workers, academics, legal experts, and other stakeholders," included a series of far-reaching recommendations on collective labour rights that provided the foundation for the 2025 Amendment Ordinance and its subsequent legislative enactment in 2026.

On the question of trade union registration, the Commission recommended the replacement of the percentage-based threshold with a fixed number approach, recognizing that the 20 percent threshold had been a major practical obstacle to trade union formation and was inconsistent with Bangladesh's obligations under Convention No. 87. The Commission recommended that the exact number be determined through stakeholder consultations, a recommendation that was implemented through the tiered system established by the 2025 Ordinance.

On collective bargaining, the Commission made recommendations for strengthening the institutional framework of collective bargaining, including the development of mechanisms for sector-level bargaining in the garment industry, the creation of a tripartite monitoring body to oversee the implementation of collective agreements, and the development of capacity-building programs for trade union negotiators and management-side representatives to improve the quality of collective bargaining in practice. These recommendations were partially implemented in the 2025 Ordinance but the institutional development they envisage remains largely incomplete.

On the right to strike, the Commission's report was notably more cautious than its recommendations on registration and collective bargaining, reflecting the political sensitivity of the issue and the strong employer resistance to any weakening of the restrictions on strike action. The Commission recommended a review of the essential services designations to ensure that they are limited to genuinely essential services, and it recommended reform of the procedural requirements for lawful strike action to reduce the barriers to the exercise of the right. However, it did not make specific recommendations for the abolition of criminal sanctions for strike action or for the comprehensive reform of the strike framework that the ILO's standards would require.

The Commission's recommendations on the EPZ labour regime were similarly cautious. While the Commission acknowledged that the exclusion of EPZ workers from mainstream trade union rights was inconsistent with Bangladesh's international obligations, it framed its recommendations in terms of gradual extension of rights rather than immediate and comprehensive integration of EPZ workers into the mainstream framework. This caution

reflected the strong political opposition of the BEPZA and the foreign investors it represents to any reform that would extend genuine union rights to EPZ workers.

### 12.2 Implementation Challenges and the Gap Between Commission Recommendations and Legislative Outcomes

The relationship between the Labour Reform Commission's recommendations and the provisions of the 2025 Amendment Ordinance and the 2026 legislation reflects both the achievements and the limitations of the reform process. The Ordinance incorporated many of the Commission's recommendations, particularly on trade union registration and the strengthening of anti-discrimination provisions, but it fell short on some of the Commission's more ambitious proposals, particularly those relating to sector-level bargaining and comprehensive EPZ reform.

The implementation of even the formal legal changes introduced by the 2025 Ordinance has been slow and uneven. Labour organizations including IndustriALL have consistently reported that progress on paper has not translated into meaningful change for workers. The first union formed under the amended law, at Fashion Pulse in Gazipur, was established in early 2026 with the support of the Bangladesh Independent Garment Workers Union Federation and the Solidarity Center, and it represents a genuine if modest achievement. But the formation of a single union in one of the thousands of garment factories in Bangladesh, while symbolically significant, does not indicate that the structural barriers to trade union organization in the sector have been overcome.

The gap between formal legal reform and practical change in collective labour rights is a persistent feature of labour law reform in developing countries and reflects the fundamental insight of socio-legal scholarship that law's effectiveness depends not merely on its textual content but on the social, economic, and institutional context in which it operates. The 2025 amendment has created a somewhat more favorable legal environment for trade union organization, but the social and economic context in which that organization must occur remains characterized by the same structural power asymmetries, the same employer resistance, and the same enforcement deficits that have constrained collective labour rights in Bangladesh for decades.

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## CHAPTER THIRTEEN: FREEDOM OF ASSOCIATION AND THE PLATFORM ECONOMY

### 13.1 Gig Workers, Platform Labour, and the New Frontiers of Collective Rights

The emergence of the platform economy and the growing significance of gig work in Bangladesh's urban labour market raises new and profound questions about the scope of collective labour rights that the existing legal framework is poorly equipped to address. Ride-hailing platforms including Pathao and Shohoz employ tens of thousands of drivers in Dhaka and other major cities; food delivery platforms including Foodpanda and Shohoz Food operate through networks of delivery workers who are classified as independent contractors rather than employees; and the rapidly expanding sector of freelance digital work connects Bangladeshi

workers with global clients through platforms including Upwork and Fiverr. All of these categories of platform worker face conditions of economic dependence, low income security, and vulnerability to arbitrary platform decisions that are in important respects analogous to the conditions of workers in traditional employment relationships.

The 2025 amendment to the BLA addresses the question of platform workers' rights in a formally significant way by expanding the definition of "worker" to include "self-employed workers, daily and temporary workers, and gig/platform workers." This expansion of the statutory definition is potentially transformative in its implications, since it formally brings gig and platform workers within the coverage of the BLA and, in principle, makes them eligible for the rights and protections that the Act provides, including the right to form and join trade unions and the right to engage in collective bargaining.

However, the practical implications of this definitional expansion are deeply uncertain. The structural features of platform work, including the algorithmic management of work assignments, the geographical dispersion of the workforce, the absence of a common physical workplace, and the complex legal relationships that platform companies establish with their workers through terms of service agreements, create formidable practical obstacles to the organization of platform workers through the mechanisms that were designed for traditional workplace-based unionism. The enterprise-level CBA system, in which a single union negotiates a collective agreement with a single employer at a single workplace, is particularly ill-suited to the platform employment context, where the "employer" may be a technology company located in a different country, the "workplace" is the public street or the worker's home, and the workforce is dispersed across an entire city or region.

The development of effective collective representation for platform workers in Bangladesh will require creative institutional innovation that goes beyond the adaptation of existing trade union models. International experience with platform worker organizing, from the California Gig Worker strikes of 2019-2020 to the Deliveroo courier organizing campaigns in the United Kingdom, suggests that platform workers have developed new forms of collective action through social media coordination, digital communication, and mutual aid networks that operate outside the formal trade union registration framework. The legal status of these forms of collective action in Bangladesh, and the extent to which they are protected by the constitutional guarantee of freedom of association in Article 38, is an important question that the courts have not yet been asked to address.

### 13.2 Theoretical Perspectives on Collective Rights in the Post-Industrial Labour Market

The challenge of extending effective collective rights to the new forms of work created by technological change and the restructuring of production and distribution systems reflects a broader theoretical problem about the adequacy of existing collective labour law frameworks for the conditions of the twenty-first century labour market. The frameworks developed by the ILO and by national legal systems during the twentieth century were designed primarily for a model of employment characterized by the standard employment relationship: full-time, indefinite, direct employment at a fixed workplace by a single employer. The dissolution of this model through the proliferation of non-standard, contingent, and platform-mediated forms of work has

created a fundamental mismatch between the legal frameworks developed for the standard employment relationship and the organizational realities of contemporary work.

The theoretical response to this mismatch has taken several forms in the recent labour law literature. The "dependent contractor" theory, developed by scholars including Miriam Cherry, Valerio De Stefano, and Antonio Aloisi, argues that a new intermediate legal category between employment and self-employment should be created that captures the economic dependence of platform workers without requiring proof of all the elements of a conventional employment relationship. This theory has influenced legislation in several jurisdictions, including the California Supreme Court's test in Dynamex Operations West v. Superior Court (2018) and the UK Supreme Court's decision in Uber BV v. Aslam (2021), and has implications for Bangladesh's approach to gig worker rights.

The "sectoral bargaining" approach, which has been adopted or advocated in various forms in several European countries including Austria, Germany, and Belgium, argues that the fragmentation of the workforce into small groups of nominally self-employed workers makes enterprise-level collective bargaining impossible and requires the development of sectoral-level mechanisms through which minimum standards for the platform economy can be established by collective negotiation between sectoral organizations of workers and the platform companies that operate in each sector. This approach has been endorsed by the ILO and is reflected in EU policy, particularly in the Directive on Adequate Minimum Wages (2022) and the ongoing development of EU platform work legislation.

For Bangladesh, the challenge of developing effective collective rights for the growing platform economy requires engagement with both the theoretical frameworks being developed in the international labour law literature and the specific institutional context of a developing country with limited regulatory capacity, a weak trade union movement, and a political economy shaped by the particular interests of local platform companies and international technology investors. The integration of the formal legal extension of the BLA to gig and platform workers with the development of appropriate institutional mechanisms for the representation of such workers is one of the most important medium-term challenges of the labour reform agenda.

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## CHAPTER FOURTEEN: INTERNATIONAL PERSPECTIVES ON COLLECTIVE LABOUR RIGHTS REFORM

### 14.1 Comparative Models: Lessons from Selected Jurisdictions

The comparative analysis of collective labour law provides important resources for the reform of Bangladesh's collective labour rights framework, both as a source of specific institutional models that might be adapted to the Bangladeshi context and as a body of evidence about the relationship between different legal designs and the actual conditions of workers' collective organization and representation. Several jurisdictions offer particularly instructive comparative models.

The German system of collective labour relations, which combines sectoral collective bargaining agreements (Flächentarifverträge) negotiated between industry-level employers' associations and trade unions with enterprise-level co-determination through works councils (Betriebsräte) established under the Works Constitution Act (Betriebsverfassungsgesetz), is widely regarded as among the most sophisticated and effective systems of collective labour governance in the world. The German model is characterized by high rates of collective bargaining coverage, effective mechanisms for worker participation in enterprise governance, and a culture of cooperative industrial relations that has contributed significantly to Germany's economic performance and social cohesion. The extension of collective agreement coverage through legal mechanisms for declaring agreements generally binding (Allgemeinverbindlichkeitserklärung) ensures that the benefits of collective bargaining are not limited to the organized sector.

The South African system of collective labour relations, established by the Labour Relations Act, 1995 (LRA), offers perhaps the most instructive comparative model for Bangladesh because of its shared status as a post-colonial developing country that has attempted to build a comprehensive system of collective labour rights from a starting point of historical exclusion and suppression of the labour movement. The LRA establishes a framework for multi-level collective bargaining through sectoral bargaining councils, which brings together employers' organizations and trade unions in each industry to negotiate agreements that cover all workers in the industry, not merely those employed by organized firms. The LRA also provides robust legal protection for the right to strike, establishing a clear procedural framework and providing comprehensive protection for strikers against dismissal.

The Nordic model, which has achieved the highest rates of collective bargaining coverage and trade union density in the world, offers a different and in some respects utopian reference point for Bangladesh's reform aspirations. The Nordic countries have achieved comprehensive collective bargaining coverage, high levels of social equality, and strong worker protection through a combination of legal frameworks favorable to collective organization, a political culture of social partnership and negotiation, and a history of sustained working class organization and political representation. The conditions that have made the Nordic model possible, including high levels of state capacity, relatively homogeneous labour markets, and strong social democratic political traditions, do not exist in Bangladesh, but the normative achievements of the model provide a valuable aspirational reference point for the direction of reform.

## 14.2 The ILO Decent Work Framework and Its Application to Bangladesh

The ILO's Decent Work agenda, developed from 1999 under the leadership of Director-General Juan Somavia, provides a comprehensive normative framework for the assessment of labour law and labour market institutions that goes beyond the traditional focus on minimum standards and extends to a positive vision of the conditions of work that are compatible with human dignity and well-being. The Decent Work framework identifies four strategic pillars: employment creation, rights at work, social protection, and social dialogue, and it treats these pillars as interconnected and mutually reinforcing rather than as separate and potentially competing objectives.

The application of the Decent Work framework to Bangladesh's collective labour rights situation reveals a picture of systematic deficit across all four pillars. Employment in Bangladesh, while extensive, is characterized by low quality, high informality, and the absence of the stable and secure employment relationships that the Decent Work framework envisages. Rights at work, including the collective rights analyzed in this Part, are formally recognized but practically denied to the majority of workers through the combination of legal restrictions, administrative failure, and structural power imbalances that have been analyzed in the preceding chapters. Social protection for workers, including unemployment insurance, pension provision, and occupational injury compensation, remains wholly inadequate and excludes the majority of workers from any meaningful security. Social dialogue, the ILO's term for the tripartite and bipartite consultation mechanisms through which labor market decisions are made collectively, exists in Bangladesh through the Tripartite Consultative Council and related bodies but has been consistently criticized by workers' organizations as insufficiently representative and insufficiently influential on policy outcomes.

The ILO's Decent Work Country Programme for Bangladesh, which is developed in consultation with the tripartite constituents and sets out the ILO's strategic priorities for engagement with Bangladesh over successive periods, has consistently identified the strengthening of freedom of association and collective bargaining as a priority for Bangladesh's labour relations system. The ILO's technical cooperation with Bangladesh has included capacity building for trade union leaders and organizers, support for the development of tripartite consultation mechanisms, and advisory assistance to the government in the development of legislative reforms. The effectiveness of this engagement has been significantly constrained by the political economy factors analyzed in Part Thirteen of this textbook, but it has contributed to the development of the reform framework that culminated in the 2025 amendment.

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## CHAPTER FIFTEEN: PHILOSOPHICAL SYNTHESIS AND REFORM AGENDA FOR COLLECTIVE LABOUR RIGHTS

### 15.1 Toward a Theory of Collective Labour Rights for Bangladesh

The analysis developed across the preceding fourteen chapters of this Part provides the basis for a philosophical synthesis that connects the technical legal analysis to the fundamental questions of justice, dignity, and power that animate the entire enterprise of collective labour law reform in Bangladesh. This synthesis draws on the multiple philosophical traditions surveyed in Chapter One, republican political philosophy, Marxist political economy, feminist jurisprudence, capabilities theory, and transformative constitutionalism, and attempts to articulate a coherent normative vision of what genuine collective labour rights would mean in the specific context of Bangladesh's political economy, history, and institutional framework.

The republican framework, with its emphasis on freedom as non-domination, provides perhaps the most immediately compelling philosophical foundation for the reform of Bangladesh's collective labour rights framework. The structural domination of Bangladeshi workers by employer power, which is pervasive and systematic in the garment sector and in the informal

economy, is the defining condition of injustice that genuine collective labour rights are designed to address. The reform of trade union registration requirements, the strengthening of anti-discrimination provisions, and the development of effective collective bargaining mechanisms are all, from the republican perspective, not merely technical improvements to the labour law system but constitutive elements of a program to transform the position of workers from one of structural dependency and potential domination to one of genuine agency and organized power.

The capabilities approach developed by Amartya Sen and Martha Nussbaum, and applied to labour law by scholars including Simon Deakin and Frank Wilkinson, provides a complementary theoretical framework. On the capabilities approach, the purpose of labour law is not merely to set minimum floors of employment protection but to create the conditions in which all workers can develop and exercise the capabilities that constitute genuine human flourishing. The capability for affiliation with others, which Nussbaum identifies as one of the central human capabilities, encompasses the right to organize and to engage in collective action, and its denial is a fundamental deprivation of human well-being.

The Marxist framework reminds us that the structural obstacles to genuine collective rights in Bangladesh cannot be overcome by legal reform alone, however comprehensive and well-designed. The power that sustains anti-union discrimination, that maintains the EPZ labour exceptionalism, and that limits the practical effectiveness of collective bargaining provisions that are formally adequate is rooted in the structural interests of capital and in the state's dependence on export-oriented growth driven by cheap and weakly organized labour. The transformation of this structural reality requires not merely better laws but the development of genuine organizational power by workers themselves, the capacity to build and sustain independent trade unions, to develop sophisticated bargaining strategies, and to exercise political influence through coalition with allied social forces.

## 15.2 The Immediate Reform Agenda for Collective Labour Rights

Drawing on the analytical and philosophical frameworks developed in this Part, the following reform priorities for Bangladesh's collective labour rights framework can be identified as immediate and urgent:

First, the comprehensive reform of the EPZ labour regime to fully integrate EPZ workers into the mainstream BLA collective labour rights framework, eliminating the structural exceptionalism that has excluded millions of workers from the protections that international law and the constitutional guarantee of freedom of association require. This reform should be accompanied by a transition period of technical support and capacity building to enable EPZ workers to develop the organizational infrastructure needed to exercise their new rights effectively.

Second, the development of a genuine mechanism for sector-level collective bargaining in the garment industry, through the creation of a tripartite sectoral body with the authority to negotiate minimum standards applicable to all enterprises in the sector, and with the institutional support needed to make such negotiations genuinely representative and effective. The garment sector's structure, with its thousands of competing enterprises and its dependence on the decisions of international buyers, makes enterprise-level collective bargaining fundamentally inadequate for

the protection of workers' interests, and only sector-level bargaining can address this structural inadequacy.

Third, the comprehensive reform of the legal framework governing the right to strike, including the elimination of disproportionate restrictions on strike action in the garment and other non-essential sectors, the simplification of the procedural requirements for lawful industrial action, and the abolition of criminal sanctions for participation in peaceful strike action. These reforms are required by Bangladesh's obligations under Convention No. 87 and are all the more urgent in light of the ICJ's advisory opinion proceedings, whose outcome is expected to further clarify the international legal obligations of states in this domain.

Fourth, the substantial strengthening of the enforcement apparatus for collective labour rights, including a major increase in the resources available to the Department of Labour for inspection and enforcement, the development of institutional independence and professional capacity within the Department, and the creation of rapid and accessible dispute resolution mechanisms for complaints of anti-union discrimination. Without effective enforcement, the most comprehensive formal legal framework will remain an exercise in aspirational rhetoric rather than a genuine protection for workers' rights.

Fifth, the extension of effective collective rights to workers in the informal economy, including domestic workers, home-based workers, and the growing category of platform and gig workers who are now formally included in the BLA's coverage but who lack the practical conditions for effective collective organization. This extension requires not merely formal legal inclusion but the development of organizational models and institutional mechanisms that are appropriate to the specific circumstances of these categories of workers.

### 15.3 The Long-Term Transformative Agenda

Beyond the immediate reform priorities, the long-term transformation of Bangladesh's collective labour relations requires a sustained political project that cannot be accomplished through legislative reform alone but requires the development of genuinely independent and representative workers' organizations with the capacity to exercise effective collective power in the industrial relations system and political influence in the democratic system.

The development of such organizations requires, in turn, a profound change in the political culture of trade unionism in Bangladesh, moving away from the model of partisan alignment with political parties and toward a model of genuine worker-centered advocacy that prioritizes the collective interests of the membership over the political interests of affiliated parties or the personal interests of union leaders. This cultural transformation, which is necessary for the development of the organizational credibility and member loyalty that effective unionism requires, cannot be mandated by law but must emerge from the internal democratic development of the unions themselves.

The role of international solidarity in supporting the development of genuine independent trade unionism in Bangladesh is an important dimension of the long-term transformative agenda. International trade union federations, including IndustriALL and its affiliates, have played a

significant role in providing organizational support, capacity building, and advocacy for independent unionism in Bangladesh, and this role is likely to become more rather than less important as the reform process continues. The development of effective international solidarity mechanisms, including supply chain monitoring frameworks that create accountability for anti-union discrimination throughout global value chains, is an important complement to domestic legal reform.

The relationship between collective labour rights and broader democratic politics in Bangladesh is a theme that runs throughout the analysis of this Part and the broader textbook of which it is part. The development of a genuinely rights-respecting collective labour relations system in Bangladesh is ultimately inseparable from the development of a political system in which workers have effective voice, in which democratic institutions are genuinely responsive to the interests of the majority rather than the preferences of the economically powerful, and in which the rule of law operates in fact as well as in form. The July Revolution of 2024 opened a window of political possibility for the realization of this vision; whether that window will remain open long enough for the institutional transformation it requires is the central question for the future of labour rights and social justice in Bangladesh.

## 15.4 The Dialectic of Reform: Law, Power, and Worker Agency

The analysis of Part Fourteen has traced a dialectical movement between legal reform and structural resistance, between the formal advancement of collective rights in the law books and the practical constraints that limit the exercise of those rights in factories, offices, and homes across Bangladesh. This dialectic is not a counsel of despair; it is an accurate description of the way in which social change happens in complex political economies, through the patient accumulation of legal and organizational advances that gradually, and often unevenly, shift the balance of power between capital and labour.

The 2025 amendment to the Bangladesh Labour Act, passed in the extraordinary political context created by the July Revolution and implemented through the Bangladesh Labour (Amendment) Act 2026, represents a genuine advance in the legal framework for collective rights, even as it falls short of the comprehensive transformation that international standards, constitutional principles, and the lived needs of Bangladeshi workers require. The reduction in registration thresholds, the prohibition of blacklisting, the extension of rights to EPZ workers, domestic workers, and platform workers, and the strengthening of anti-discrimination provisions are real achievements that provide a better legal foundation for the development of genuine independent unionism than existed before.

The conversion of these legal advances into practical improvements in the conditions of workers' collective life requires the sustained effort of three interconnected forces: a trade union movement that is capable of building genuine member loyalty, developing sophisticated strategies, and sustaining itself through the inevitable setbacks and challenges that any serious attempt at collective organization in Bangladesh's political economy will face; a civil society that supports and reinforces workers' organizing efforts through research, legal advocacy, and public communication; and a state apparatus that genuinely enforces the rights it has formally enacted

rather than treating enforcement as a performance for international audiences while allowing anti-union discrimination to continue with practical impunity.

The analysis has also demonstrated the continuing importance of international pressure, particularly from the ILO supervisory system, the EU's GSP framework, and international labour rights organizations, in maintaining the political space for reform against the constant pressure of employer and investor interests. The ILO Roadmap, established in 2021 and reviewed annually, has provided a framework of accountability that has been essential in sustaining reform momentum even through periods of political uncertainty and administrative resistance. The IndustriALL report of April 2026, which documents the continuing gap between formal legal reform and practical realization of collective rights, is an important contribution to this accountability framework and a necessary corrective to any tendency to celebrate formal legal achievements without confronting the structural obstacles to their implementation.

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## CONCLUDING OBSERVATIONS ON PART FOURTEEN

Part Fourteen has examined the law of collective labour rights in Bangladesh across fifteen chapters that have moved from philosophical foundations to historical analysis, from doctrinal examination to structural critique, and from institutional assessment to normative synthesis. The central finding of the analysis is that Bangladesh possesses a formal legal framework for collective labour rights that, particularly following the 2025-2026 reforms, contains significant protections for the right to organize, the right to collective bargain, and the right to strike, but that this formal framework is systematically undermined by structural power imbalances, institutional failures, and political economy constraints that prevent the formal rights from being realized in practice by the vast majority of Bangladeshi workers.

The gap between formal rights and practical realization is not a new observation; it is a finding that has been made by every serious analysis of Bangladeshi collective labour law for decades. What distinguishes the present moment is that the political conditions created by the July Revolution, the ILO Roadmap accountability framework, and the growing international pressure through trade and supply chain mechanisms have created an unprecedented opportunity for reform that goes beyond the formal and toward the structural. Whether this opportunity is seized, and whether the formal advances of 2025-2026 are translated into genuine organizational power for Bangladesh's working people, depends on choices and struggles that will unfold in the years ahead.

The philosophical synthesis developed in Chapter Fifteen connects the technical legal analysis to the fundamental aspirations of justice that motivate the entire project of labour law reform. Freedom of association, the right to collective bargaining, and the right to strike are not merely legal entitlements or policy instruments. They are, as the republican, capabilities, and human rights traditions all affirm, constitutive elements of human dignity, genuine equality, and meaningful freedom in the conditions of working life. Their realization in Bangladesh, for the ninety million or more workers whose lives they are designed to protect, is not merely a legal project but a moral and political imperative of the first order.

Part Fifteen of this textbook will examine the law of social security, occupational injury compensation, and the emerging Employment Injury Scheme, building on the analysis of collective rights in this Part to provide a comprehensive examination of the protective and redistributive dimensions of Bangladeshi labour law that go beyond the individual employment relationship to address the broader social risks of working life: injury, illness, unemployment, and old age.

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## BIBLIOGRAPHICAL NOTE AND FURTHER READING FOR PART FOURTEEN

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*End of Part Fourteen*

*Part Fifteen will examine the Law of Social Security, Occupational Injury Compensation, and Workers' Welfare in Bangladesh, analyzing the legal architecture of workers' protection against the social risks of working life, including the newly established Employment Injury Scheme, the Workers' Profit Participation Fund framework, and the long-term agenda for the development of a comprehensive social protection system for Bangladesh's working population, with particular*

*attention to the challenges posed by informality, the platform economy, and the transition to a post-garment-industry economic structure.*

## PART FIFTEEN: SOCIAL SECURITY, OCCUPATIONAL INJURY COMPENSATION, AND WORKERS' WELFARE IN BANGLADESH

### INTRODUCTORY OVERVIEW

Part Fifteen of this textbook addresses one of the most consequential and philosophically resonant domains of labour law: the legal architecture through which a society provides protection to its working people against the social risks inherent in economic life. These risks, including injury at work, disease caused by occupational exposure, temporary or permanent loss of earning capacity, old age, and the premature death of a breadwinner, are universal in the sense that every worker, in every society, is potentially subject to them. But they fall most heavily and most devastatingly on those workers who lack the private resources to absorb them: the poor, the precarious, the informally employed, and the structurally excluded. The adequacy of a society's social security system is therefore, in a profound sense, a measure of the seriousness of its commitment to the principle that every human being has inherent worth and is entitled to the basic conditions of a dignified life.

In Bangladesh, the social security system is a patchwork of formal statutory schemes, targeted social assistance programs, informal family and community support networks, and innovative new institutional mechanisms developed in response to the particular vulnerabilities of the country's export-dependent industrial workforce. The most significant recent development in this field is the Employment Injury Scheme (EIS) pilot, which was launched in the Ready-Made Garments (RMG) sector in June 2022 and has been progressively expanded in scope and coverage, reaching EPZ workers in February 2025 and developing a framework for potential national scaling by 2027. Alongside this, the Universal Pension Scheme introduced in August 2023 represents an ambitious attempt to extend old-age income security to a broader segment of the population, though it faces severe challenges of enrollment, trust, and design adequacy. The Workers' Profit Participation Fund remains a structurally flawed but formally significant mechanism for sharing enterprise profits with workers. And beyond these formal schemes lies a vast informal economy in which approximately 85 percent of Bangladesh's working population toils without any effective social protection whatsoever.

The analysis of Part Fifteen proceeds across fifteen chapters. The first five chapters develop the philosophical, theoretical, and comparative foundations of social security law. The next five chapters examine the specific legal architecture of Bangladesh's social security and workers' welfare framework in detail, engaging in close doctrinal analysis and structural critique. The final five chapters address the reform agenda, connect the analysis to broader theoretical frameworks, and develop a normative synthesis appropriate to the specific context of Bangladesh's political economy, constitutional framework, and international obligations.

# CHAPTER ONE: THE PHILOSOPHY OF SOCIAL SECURITY: FOUNDATIONS, THEORIES, AND CONTESTED VISIONS

## 1.1 The Concept of Social Security and Its Philosophical Roots

The concept of social security, as a systematic legal and institutional response to the social risks of economic life, is a relatively modern development in the history of political and legal thought. It emerged in recognizable form only in the late nineteenth century, with Otto von Bismarck's pioneering social insurance legislation in Imperial Germany and the debates it stimulated across Europe and eventually the world. But the philosophical ideas that animate the concept of social security have much deeper roots, drawing upon traditions of political philosophy, moral philosophy, and political economy that long predate the institutional forms through which social security is realized in modern law.

At the most fundamental level, social security rests upon a claim about the nature of the human condition and the obligations of political community. The claim is that human beings are vulnerable: they are subject to illness, injury, disability, and death; they age and lose the capacity for productive labour; they are sometimes left without employment through no fault of their own; and their capacity to provide for themselves and their dependents through the exercise of their labour power can be disrupted or destroyed by contingencies over which they have no control. This vulnerability is not a personal failing or a moral deficiency; it is an ineliminable feature of the human condition, which affects the powerful and the powerless alike, though it devastates the poor in ways that the wealthy can largely escape through the private management of risk.

The political philosophical tradition has long recognized this dimension of human vulnerability and has debated the obligations it creates for political community. John Rawls, in A Theory of Justice, argued that rational persons deliberating behind the veil of ignorance about the principles of a just society would choose principles that protect the most vulnerable members of society, because they recognize that they might themselves turn out to be among the most vulnerable. The difference principle, which requires that social and economic inequalities be arranged to maximize the benefit of the least advantaged members of society, provides a philosophical foundation for a robust system of social protection that goes well beyond the minimalist floor of bare subsistence to encompass the kinds of social provision that allow everyone to live with dignity and participate fully in social and economic life.

Martha Nussbaum's capabilities approach, developed in Creating Capabilities (2011) and in the earlier Women and Human Development (2000), provides a complementary and in some respects richer philosophical foundation for social security. Nussbaum argues that a just society must ensure that all its members have access to a threshold level of the central human capabilities, the functionings that are constitutive of a genuinely human life. Among these central capabilities, she includes bodily health and integrity, the social bases of self-respect, the ability to control one's environment, and the capability for play and affiliation. A comprehensive system of social security is a necessary condition for the realization of these capabilities for all workers, because the risks of economic life, if unaddressed by social provision, will systematically deprive large numbers of workers and their families of the capabilities that make a genuinely human life possible.

The utilitarian tradition, associated with Jeremy Bentham and developed in the twentieth century by thinkers such as Peter Singer and John Harsanyi, provides yet another philosophical foundation for social security, grounded in the maximization of aggregate welfare rather than in the protection of individual rights or capabilities. From a utilitarian perspective, social security is justified by the principle of diminishing marginal utility: money transferred from the wealthy to the poor through social security systems produces a much larger increase in the welfare of the poor recipients than the corresponding decrease in the welfare of the wealthy contributors, because the poor have higher marginal utility for money. A comprehensive and redistributive social security system is therefore welfare-maximizing, and its absence represents a failure to maximize aggregate welfare that can be corrected through appropriately designed social institutions.

These three philosophical traditions, Rawlsian liberalism, the capabilities approach, and utilitarianism, converge in support of robust social security systems, though they diverge in their theoretical foundations and in the specific design implications they generate. All three, however, share the fundamental insight that social security is not merely a matter of charitable provision or governmental benevolence but is a requirement of justice, rooted in the fundamental moral equality of all persons and in the obligations of political community to ensure that all its members can live lives worthy of human dignity.

The Marxist tradition offers a more radical and structurally oriented perspective on social security. For Marx and subsequent Marxist theorists, social security is not a neutral mechanism for managing the social risks of economic life but is a constitutive element of the reproduction of capitalist social relations. Social security systems emerged historically not primarily from a commitment to justice or welfare but from the recognition by ruling classes that the reproduction of a healthy and disciplined labour force required some degree of social provision to prevent the physical destitution and political radicalization of the working class. Social security systems also serve the function of de-commodifying labour to a limited degree, reducing the absolute dependence of workers on the wage contract for their survival and thereby providing a modest counterweight to the coercive power of capital in the labour market.

The German sociologist Gosta Esping-Andersen's influential typology of welfare state regimes, developed in The Three Worlds of Welfare Capitalism (1990), provides a middle-level theoretical framework between the grand philosophical traditions and the institutional detail of specific social security systems. Esping-Andersen distinguishes three ideal types of welfare state: the liberal welfare state (exemplified by the United States and the United Kingdom), which is characterized by minimal, means-tested social assistance, strong labor market commodification, and residual social rights; the conservative-corporatist welfare state (exemplified by Germany and France), which is characterized by social insurance schemes organized around employment status and occupation, limited redistribution, and preservation of social status differences; and the social-democratic welfare state (exemplified by the Scandinavian countries), which is characterized by universal coverage, comprehensive benefits, high de-commodification of labor, and strong redistribution. This typology has been extensively criticized and revised in subsequent scholarship, particularly for its inadequate treatment of gender, race, and the Global South, but it remains a useful starting point for comparative analysis of social security systems.

The concept of de-commodification, which Esping-Andersen uses as a key analytical tool, is particularly relevant to the analysis of Bangladesh's social security situation. De-commodification refers to the degree to which a person can maintain a livelihood without reliance on the market, that is, the degree to which social security provision allows a worker to leave employment, or to withstand the threat of dismissal, without facing destitution. A highly de-commodifying social security system strengthens workers' bargaining power in the labour market, because workers who can survive outside the labour market are not compelled to accept whatever terms employers choose to offer. Conversely, the absence of effective social security, as in Bangladesh, maximizes the commodification of labour: workers who have no alternative to the wage contract, and no protection against the risks of unemployment, disability, or old age, are entirely at the mercy of employers and cannot exercise genuine bargaining power in the labour market.

### 1.2 The Human Rights Approach to Social Security: International Standards and Their Theoretical Foundations

The reconceptualization of social security as a human right, rather than merely a matter of social policy or governmental charity, is one of the most significant theoretical developments in the field of social security law over the past half century. This reconceptualization has been driven by the development of international human rights law, the elaboration of economic and social rights by international treaty bodies, and the theoretical work of scholars who have argued that social security rights are genuine human rights grounded in the same foundations of human dignity and equality that underlie civil and political rights.

The international human rights framework for social security begins with Article 22 of the Universal Declaration of Human Rights (UDHR, 1948), which provides that "everyone, as a member of society, has the right to social security." Article 25 elaborates this right, providing that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." These provisions of the UDHR represent the first systematic international recognition of social security as a human right, and they have provided the normative foundation for the subsequent development of binding international obligations in this field.

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), to which Bangladesh acceded in 1998, contains the most important binding international obligation with respect to social security. Article 9 of the ICESCR provides that "the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." The UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, has elaborated the content of this obligation in General Comment No. 19 (2008), which provides a comprehensive interpretation of Article 9. The Committee identifies the essential elements of the right to social security as including availability (the social security system must cover the relevant social risks), accessibility (coverage must be comprehensive and there must be no unreasonable barriers to access), adequacy (benefits must be sufficient to enable beneficiaries

to maintain their health and dignity), and adaptability (the system must be kept up to date to ensure its continued relevance).

The ILO's Social Security (Minimum Standards) Convention, 1952 (Convention No. 102), establishes the most detailed international standard for the content of social security systems. Convention No. 102 identifies nine branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit. It establishes minimum standards for the coverage and benefit levels in each branch, and it recognizes the principle of tripartite administration through which workers, employers, and the state jointly govern social security schemes. Bangladesh has not ratified Convention No. 102, a significant omission that reflects the gap between the country's formal international commitments and its actual social security provision.

The ILO's Social Protection Floors Recommendation, 2012 (Recommendation No. 202), adopted at the International Labour Conference in June 2012, represents the most recent and in some ways the most practically consequential international instrument in this field. Recommendation No. 202 calls on states to establish "social protection floors" comprising at least four basic guarantees: essential health care, basic income security for children, basic income security for persons of working age who are unable to earn sufficient income, and basic income security for older persons. The Recommendation recognizes the diversity of national circumstances and the constraints on fiscal capacity in developing countries, and it calls for progressive realization of higher levels of social protection as national resources allow. Bangladesh's National Social Security Strategy (NSSS) of 2015, updated in subsequent years, explicitly adopts the social protection floors framework as its organizing principle.

The theoretical foundations of the human rights approach to social security have been developed by a range of scholars, including Henry Shue, James Nickel, and Gijsbert Vonk. Shue's Basic Rights (1980) introduced the concept of subsistence rights as basic rights, grounded in the same considerations of fundamental importance and moral urgency that underlie physical security rights. Shue argued that subsistence rights, including the right to minimal economic security, are not luxury rights or aspirational goals but are basic rights whose fulfillment is a precondition for the exercise of any other rights. A person who cannot ensure the basic conditions of physical survival, including food, shelter, and medical care, cannot effectively exercise civil and political rights, because they are entirely consumed by the struggle for bare survival.

Vonk's 2025 article in the European Journal for Social Security on "welfare state dystopia" as a challenge to the fundamental right of social security offers a penetrating contemporary analysis of the tensions between the formal recognition of the right to social security and the practical operation of welfare states that have, in many cases, become instruments of stigmatization, conditionality, and social control rather than genuine instruments of human dignity. Vonk argues that when a lack of respect for social security beneficiaries is treated as a human rights problem, the main focus is usually on civil and political rights, less often on social rights, and least of all on the right to social security itself. This observation has deep relevance to the Bangladeshi context, where the beneficiaries of social protection programs are frequently subjected to

demeaning and degrading administrative processes that undermine the very dignity the programs are supposed to protect.

### 1.3 Theories of Social Risk and the Justification of Collective Provision

The philosophical foundations of social security are closely related to a set of theoretical questions about the nature of social risk and the appropriate institutional responses to it. Risk theory, as developed by scholars including Ulrich Beck, Anthony Giddens, and Frank Furedi, provides important insights into the conditions under which social risk management through collective institutions is justified and into the political economy of risk distribution.

Beck's Risk Society (1986, translated into English 1992) argued that industrial modernity has produced a new kind of society characterized by the systematic production of risks that are global in scope, incalculable in their consequences, and distributed independently of the social class structures that distributed the goods of industrial society. Beck's analysis is relevant to several of the occupational and environmental risks that affect Bangladeshi workers, including the risks associated with climate change, which threatens the agricultural livelihoods of millions of Bangladeshi workers, and the risks associated with chemical and physical hazards in garment factories, tanneries, and other industries. However, Beck's theory was developed primarily with the risks of advanced industrial societies in mind, and it requires significant adaptation to address the specific risk landscape of a developing country like Bangladesh, where traditional social risks of poverty, disease, and injury remain vastly more important in quantitative terms than the new risks of reflexive modernity.

The insurance theory of social security, which is closely associated with the contributory social insurance model developed by Bismarck and theorized by scholars in the actuarial and social policy traditions, holds that social security is justified as a collective mechanism for managing individual risks that are too large for individuals to bear alone but that can be pooled through a social insurance scheme in a way that significantly reduces their impact on individual welfare. The actuarial logic of insurance, based on the law of large numbers and the diversification of risk, provides a powerful justification for mandatory social insurance schemes: by requiring all workers to contribute to a common fund, and by paying benefits to those who experience the insured-against risk, a social insurance scheme provides a degree of income security that no individual, acting alone in the market, could achieve at comparable cost.

However, pure insurance theory provides an inadequate justification for the redistributive dimensions of social security that are essential to the protection of the most vulnerable workers. In a pure insurance scheme, premiums would be proportionate to risk, and those who face the highest risks, typically the poorest workers in the most dangerous jobs, would pay the highest premiums. A genuine commitment to social security as a human right requires departing from the pure insurance logic in the direction of social solidarity: charging higher-income contributors more and lower-income contributors less, providing higher replacement rates to lower-income beneficiaries, and covering risks that arise from structural social disadvantage rather than purely individual misfortune.

The social solidarity approach to social security, which has been most fully developed in the French tradition of social law and in the writings of scholars such as Leon Duguit and Alain Supiot, holds that social security is justified not primarily by the logic of risk pooling but by the principle of social solidarity: the recognition that members of a society are mutually dependent and bear collective responsibility for each other's welfare. Supiot's concept of "drawing rights" or "social rights" in Beyond Employment (2001) represents one of the most sophisticated recent theoretical attempts to reconceptualize social security in a way that goes beyond both the insurance logic and the traditional employment-based model of social rights, proposing instead a system of individual accounts of social rights that workers accumulate over time and can draw upon in various circumstances, including for training, care responsibilities, and entrepreneurial activity, as well as for the traditional social security contingencies.

These theoretical frameworks have different implications for the design of social security systems in developing countries. The pure insurance model leads toward a contributory social insurance scheme that is funded by worker and employer contributions and that pays benefits to those who have contributed for a sufficient period. The social solidarity model leads toward a more redistributive scheme that covers everyone on the basis of membership in the political community rather than on the basis of contributory history. The capabilities approach leads toward a scheme that focuses on achieving threshold levels of capability for all persons rather than on income replacement as such. And the social investment approach, which has been influential in EU social policy since the late 1990s, leads toward a scheme that emphasizes investment in human capital and productive capacity rather than passive income replacement.

### 1.4 Social Security and the Development State: Contested Paradigms

The relationship between social security and economic development has been one of the most contested issues in development economics and comparative political economy. The mainstream development economics tradition, associated with the Washington Consensus and with the policy frameworks promoted by the World Bank and the International Monetary Fund in the 1980s and 1990s, tended to treat social security as a potential obstacle to economic development, on the grounds that mandatory social contributions raised the cost of labour, that social insurance schemes distorted labor market behavior, and that fiscal resources spent on social protection were unavailable for productive investment.

This position has been substantially revised in recent years, in the light of both theoretical developments and empirical evidence. The theoretical critique of the Washington Consensus perspective on social security has been developed by a number of scholars, including Gosta Esping-Andersen, Bob Jessop, and Peter Evans, who have argued that social security systems are not merely redistributive mechanisms but are productive investments that enhance the quality and productivity of the labor force, reduce social conflict, and enable the development of the kind of flexible and adaptable workforce that is required by a knowledge-based economy. The "social investment state" paradigm, which has been influential in European social policy since the work of Anthony Giddens in the late 1990s, holds that social security should be reconceived not as a passive safety net but as an active investment in human capabilities that enhances economic productivity and social cohesion.

The empirical evidence on the relationship between social security and economic development is broadly supportive of the social investment perspective. Studies of the relationship between social protection coverage and economic growth in developing countries have generally found that countries with stronger social protection systems achieve higher and more sustained rates of economic growth, lower poverty rates, and better health and education outcomes than comparable countries with weaker social protection. The ILO's World Social Protection Report 2020-22 documents the relationship between social protection and a range of development outcomes, including education, health, gender equality, and poverty reduction, and argues strongly for the complementarity of social protection and development rather than the trade-off assumed by earlier development economics approaches.

In Bangladesh, the debate about the relationship between social security and economic development has been shaped by the country's dependence on export-led growth in the garment sector and by the political economy of a development model that has relied heavily on the competitive advantage of low labour costs. From within this development model, social security contributions are perceived primarily as a cost imposed on export industry that risks undermining competitiveness. The employer lobby, represented by the BGMEA, has consistently argued that any significant extension of social security coverage to garment workers would threaten the international competitiveness of the sector and lead to relocation of production to lower-cost jurisdictions.

However, this argument, while it carries real weight in the political economy of Bangladesh, is significantly overstated and rests on contestable empirical assumptions. The EIS pilot itself provides important evidence on this point: the scheme has been financed primarily not by employer contributions but by contributions from international brands, who have voluntarily pledged 0.019 percent of their sourcing value to the scheme. The brands' willingness to contribute to the EIS reflects their recognition that social protection for workers in their supply chains is a commercial necessity as well as a moral obligation, since reputational damage from high-profile workplace injury cases in Bangladesh has imposed significant costs on brands in terms of consumer boycotts, investor pressure, and regulatory scrutiny. This suggests that the framing of social security as a pure cost to the industry misses the commercial benefits of social protection in terms of brand reputation, worker productivity, and reduced turnover.

### 1.5 The Vulnerability Approach and Its Implications for Social Security Law

One of the most significant recent theoretical developments in social security law and human rights theory is the emergence of the vulnerability approach, developed most fully by the feminist legal theorist Martha Albertson Fineman and her collaborators. Fineman argues that the liberal legal tradition has built its framework of rights and entitlements around the figure of the autonomous, self-sufficient, rational individual, an idealized subject who does not correspond to the actual condition of human beings, who are all, without exception, vulnerable to physical and social harms and dependent upon social relationships and institutions for their capacity to function. Fineman's central claim is that vulnerability is universal and constant, a condition of human embodiment rather than a characteristic of particular marginalized groups, and that the recognition of universal vulnerability as the foundational premise of legal and political theory would have transformative implications for the design of law and policy.

Applied to social security law, the vulnerability approach challenges the tendency to treat social security as a special provision for the poor or the disabled, rather than as a universal institution through which society manages the universal condition of human vulnerability. It also challenges the contributory social insurance model, which ties entitlement to social security to a prior history of formal employment and contribution, thereby excluding those who are most vulnerable precisely because they have not been able to secure stable formal employment. And it challenges the work-first or workfare approaches that have become influential in social security reform in many countries, which treat paid employment as the primary mechanism of social inclusion and condition social security entitlements on labor market participation.

In the Bangladeshi context, the vulnerability approach has several practical implications. It suggests that social security systems should be designed to protect all workers, not merely those in formal employment; that entitlement to social security should not depend upon contributory history in formal employment; and that the most marginalized workers, including domestic workers, agricultural workers, home-based workers, and platform workers, should be prioritized for inclusion rather than left to the residual category of "informal" workers outside the reach of the formal system.

### 1.6 Political Philosophy and the Social Contract: Grounding Social Security in Fundamental Justice

The most fundamental philosophical question about social security is whether it is a matter of justice or merely of charity and benevolence. If social security is a matter of justice, then workers have a right to it in the strong sense: a right that creates correlative obligations on others, including the state, that must be fulfilled regardless of their cost or convenience. If social security is merely a matter of charity or political benevolence, then it is a desirable but not obligatory element of state provision, and its extent and character are properly left to the discretion of the political process without any strong normative constraint.

The philosophical tradition has overwhelmingly supported the view that social security is a matter of justice. From the natural rights tradition, through the social contract tradition, to the modern liberal and social democratic traditions, the philosophical arguments for social security as a requirement of justice are powerful and well-developed. Rawls's difference principle provides perhaps the most systematic philosophical argument for the view that justice requires the kind of social provision that makes the least advantaged members of society as well-off as possible. Nussbaum's capabilities approach provides a complementary argument grounded in the specific content of the capabilities that constitute a genuinely human life. Henry Shue's basic rights framework provides an argument grounded in the conditions necessary for the meaningful exercise of any rights at all. And the international human rights framework, which Bangladesh has formally embraced, provides a legal expression of these philosophical commitments.

The social contract tradition, in the version developed by Jean-Jacques Rousseau and adapted by more recent contract theorists, also provides powerful arguments for social security. Rousseau's argument in The Social Contract that legitimate political authority must serve the common good of all members of the political community, not merely the interests of the powerful, implies that a political community that allows large numbers of its members to live in destitution, preventable

illness, and insecurity is not a legitimate polity. The social contract is a compact among citizens for their mutual benefit, and a social security system is one of the central institutional expressions of this mutual commitment.

In Bangladesh, the constitutional framework provides formal expression of the social contract tradition. The Constitution of 1972, with its fundamental principles of socialism and social justice, its provisions on the right to work and fair wages as fundamental principles of state policy, and its commitment to the elimination of exploitation, reflects a vision of the political community as a compact for the mutual benefit of all citizens, including the most vulnerable. The implementation of this constitutional vision in the specific institutional forms of social security law is one of the central tasks of the legal reform agenda analyzed in this Part.

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## CHAPTER TWO: THE INTERNATIONAL LEGAL FRAMEWORK FOR SOCIAL SECURITY AND OCCUPATIONAL INJURY COMPENSATION

### 2.1 ILO Conventions on Social Security: From Convention No. 102 to the Social Protection Floors Recommendation

The international legal framework for social security has been developed primarily through the ILO's standard-setting process, which has produced a comprehensive set of conventions and recommendations covering the full range of social security contingencies. Understanding this framework is essential to the assessment of Bangladesh's social security system, both because Bangladesh's international obligations in this field are significant and binding, and because the ILO framework provides the most detailed and authoritative international standard against which the adequacy of domestic social security provision can be measured.

The ILO Constitution of 1919, adopted at the Paris Peace Conference, included in its Preamble a reference to the need for "insurance against sickness, disease and injury arising out of employment" as one of the elements of improved conditions of labor that the ILO was established to promote. This early recognition of the importance of social insurance has been developed and elaborated through nearly a century of ILO standard-setting activity.

The foundational ILO convention in the field of social security is Convention No. 102 (Social Security Minimum Standards Convention, 1952), which establishes minimum standards for nine branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit. Convention No. 102 was designed to consolidate and rationalize the earlier piecemeal development of ILO social security standards, and to provide a comprehensive framework that could serve as a point of reference for both industrialized and developing countries. The Convention allows flexibility in implementation: states may ratify by accepting a minimum of three of the nine branches (with certain combinations required), and minimum standards of coverage and benefit levels are set at levels that can be met by countries at various stages of economic development.

The Employment Injury Benefits Convention, 1964 (Convention No. 121), is the most directly relevant ILO instrument to the Employment Injury Scheme currently operating in Bangladesh. Convention No. 121 establishes detailed standards for the protection of workers and their families against the consequences of employment injury and occupational disease. It requires states parties to provide periodic payments to workers who are temporarily incapacitated as a result of a work-related injury or disease, permanent periodic payments to workers who suffer permanent incapacity above a specified threshold, periodic payments to the dependents of workers who die as a result of a work-related injury or disease, and medical care and rehabilitation for workers injured in the course of employment. Article 7 of Convention No. 121 requires countries to define industrial accidents, including the conditions under which a commuting accident is considered to be an industrial accident, which is the international standard basis for the EIS pilot's decision to extend coverage to commuting accidents from July 2024.

Bangladesh has not ratified Convention No. 121, but the EIS pilot has been explicitly designed to provide benefits in accordance with the standards of Convention No. 121, and the ILO has been providing technical support to the EIS precisely to ensure that the scheme meets international standards even in the absence of formal ratification. The 2025 comprehensive consultative workshops on the national EIS, organized with three thematic sessions covering coverage and benefits, administration and governance, and costing and financial sustainability, are preparing the ground for a national scheme that would bring Bangladesh into compliance with Convention No. 121, whether through formal ratification or through conforming domestic legislation.

The ILO's Social Protection Floors Recommendation, 2012 (Recommendation No. 202), is not a binding convention but a normative guidance instrument that has had significant influence on social protection policy in developing countries, including Bangladesh. Recommendation No. 202 calls on states to establish and maintain nationally defined social protection floors, comprising as a minimum the following basic social security guarantees: access to essential health care; basic income security for children; basic income security for persons of working age who are unable to earn sufficient income, for reasons such as sickness, unemployment, maternity or disability; and basic income security for older persons. The Recommendation emphasizes the principle of universality, calling for the extension of social protection to all persons, including those in the informal economy, and it provides guidance on the design of social protection systems that are financially sustainable, effective, and respectful of the rights of beneficiaries.

Bangladesh's National Social Security Strategy (NSSS), adopted in 2015 and updated in subsequent years, explicitly draws upon the Social Protection Floors framework as its organizing principle. The NSSS establishes four "lifecycle-based" pillars of social protection corresponding to the four basic social security guarantees of Recommendation No. 202, and it provides a roadmap for the progressive extension of social protection coverage across the population. The EIS is identified in the NSSS as a key component of the employment-age pillar of the social protection floor, alongside the Universal Pension Scheme (which corresponds to the old-age pillar) and various social assistance programs for children and the destitute.

### 2.2 Employment Injury Compensation: The International Standards in Detail

Employment injury compensation occupies a particularly important position in the international social security framework, both because of the historical significance of workers' compensation as one of the earliest forms of social insurance and because of the particular seriousness of the harm that employment injury causes. A worker who is injured at work faces a double disadvantage: not only does the injury itself cause physical suffering and potentially permanent disability, but it also eliminates or reduces the worker's capacity to earn the income upon which the worker and the worker's family depend for their livelihoods.

The historical development of employment injury compensation law is one of the most instructive case studies in the social history of labour law. Before the development of employers' liability law and workers' compensation in the nineteenth century, a worker injured at work had no legal remedy against the employer unless the worker could prove that the employer was negligent. The common law doctrine of common employment (or fellow servant rule) held that an employer was not liable for injuries caused to a worker by the negligence of another worker employed in the same "common employment," effectively eliminating most injury claims in factory settings where the negligence of a fellow worker was the proximate cause of the injury. The doctrines of volenti non fit injuria (to one who consents no injury is done) and contributory negligence further narrowed the scope of workers' claims against employers.

The progressive dismantling of these common law barriers to workers' compensation began in Europe in the 1870s and 1880s and in the United Kingdom with the Employers' Liability Act 1880 and the Workmen's Compensation Act 1897. Bismarck's Accident Insurance Law of 1884 introduced the principle of no-fault compensation, under which injured workers were entitled to compensation regardless of fault, financed by employer contributions and administered by trade associations. This no-fault, employer-funded model became the dominant paradigm for employment injury compensation worldwide, and it is the model adopted by the ILO's Convention No. 121 and by the EIS pilot in Bangladesh.

The no-fault model of employment injury compensation rests on two fundamental principles. The first is the principle of enterprise liability: the employer, by engaging in productive activities that create risks of injury, bears collective responsibility for the injuries that result from those activities, regardless of whether the employer was personally negligent. This principle is grounded in both consequentialist and deontological moral philosophy: consequentially, it creates strong incentives for employers to invest in safety by making them bear the costs of injury; deontologically, it recognizes that the employer who benefits from the workers' productive activities bears a special responsibility for the risks those activities create.

The second fundamental principle of no-fault employment injury compensation is risk pooling: individual employers share the cost of employment injury through a common insurance fund, rather than each bearing the full cost of injuries in their own enterprise. Risk pooling is justified by both efficiency and equity considerations: it is more efficient than individual employer liability because it distributes the cost of low-probability, high-consequence events across a large pool of risk-bearers; and it is more equitable because it prevents the bankruptcy of small enterprises in the face of catastrophic injury claims and ensures that injured workers can receive full compensation even when their employer cannot afford to pay.

The EIS pilot in Bangladesh departs from both of these principles in important ways that reflect the specific circumstances of a developing country just beginning to build its social security infrastructure. Rather than imposing a mandatory contribution on employers and pooling risk across all employers in the sector, the EIS has been financed primarily by voluntary contributions from international brands, with brands pledging 0.019 percent of their sourcing value to the fund. This brand-financing model is innovative and has enabled the scheme to operate without imposing a new cost on Bangladeshi employers during the pilot phase, but it is inherently unstable and subject to the discretionary decisions of individual brands about their corporate social responsibility commitments. The development of the national EIS, planned for scaling by 2027, will require a transition to a mandatory, employer-financed model in order to achieve the universality, sustainability, and legal certainty that effective employment injury compensation requires.

### 2.3 The Right to Health and Occupational Health Standards in International Law

The right to the highest attainable standard of physical and mental health, recognized in Article 12 of the ICESCR, has a direct bearing on the legal framework for occupational health and safety in Bangladesh. The UN Committee on Economic, Social and Cultural Rights, in General Comment No. 14 (2000), has interpreted Article 12 to encompass the right to healthy working and environmental conditions, and has held that states parties are obligated to adopt and implement effective measures to improve occupational health and safety standards and to prevent workplace-related illness and injury.

The ILO's framework of occupational health and safety standards is the most detailed international standard in this area, comprising a series of conventions that address both general occupational health and safety principles and specific hazards. The Occupational Safety and Health Convention, 1981 (Convention No. 155), establishes the framework of obligations for states parties: they must formulate, implement, and periodically review a coherent national policy on occupational safety and health; they must require employers to ensure that workplaces are safe and without risks to health; and they must provide for the enforcement of occupational health and safety legislation. Bangladesh has ratified Convention No. 155, creating binding international obligations that go significantly beyond what the current domestic regulatory framework actually delivers.

The ILO's Promotional Framework for Occupational Safety and Health Convention, 2006 (Convention No. 187), which Bangladesh has also ratified, requires states parties to establish and progressively develop a coherent national system for occupational safety and health, including legislation, a national authority responsible for OSH, mechanisms for social partner consultation, and adequate OSH inspection arrangements. The Convention's requirement for a preventive OSH culture, in which the right to a safe and healthy working environment is respected and promoted, represents an aspirational standard that Bangladesh's current institutional framework is far from meeting.

### 2.4 Bangladesh's International Obligations: Ratification Status and Compliance Assessment

Bangladesh has ratified 39 ILO Conventions, including all 10 fundamental conventions. However, the country's ratification record in the field of social security is considerably thinner than in the field of fundamental labour rights. As noted above, Bangladesh has not ratified Convention No. 102 (Social Security Minimum Standards) or Convention No. 121 (Employment Injury Benefits), the two most directly relevant ILO conventions to the analysis of this Part. The country has also not ratified Convention No. 183 (Maternity Protection, 2000), Convention No. 168 (Employment Promotion and Protection against Unemployment, 1988), or several other important social security conventions.

This gap between Bangladesh's commitments in the field of fundamental labour rights and its commitments in the field of social security reflects the political economy of labour law development in Bangladesh, in which the primary driver of legislative reform has been international pressure focused on the fundamental rights, particularly freedom of association, rather than on the broader social security agenda. The ILO's engagement with Bangladesh on social security has been primarily through technical cooperation programs rather than through the supervisory machinery for ratified conventions, which has reduced the pressure for compliance and the accountability for gaps in social security provision.

The EU's GSP+ framework, under which Bangladesh benefits from preferential trade access in exchange for the effective implementation of 27 international conventions including ILO Conventions, covers the core labour standards but does not specifically include Convention No. 102 or Convention No. 121. This means that Bangladesh's extensive social security deficit has not been subject to the same international accountability that applies to its collective labour rights deficits, creating a structural gap in the international accountability framework that has allowed social security reform to proceed at a much slower pace than collective rights reform.

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## CHAPTER THREE: THE WORKMEN'S COMPENSATION FRAMEWORK: DOCTRINAL ANALYSIS OF CHAPTERS VII AND VIII OF THE BANGLADESH LABOUR ACT

### 3.1 The Legal Architecture of Employment Injury Compensation Under the BLA

The Bangladesh Labour Act, 2006 contains comprehensive provisions on employment injury compensation in Chapter VII, which governs "Compensation for Injury by Accident" and covers the legal rights of workers injured in the course of employment. These provisions represent the primary domestic legal framework for employment injury compensation outside the EIS pilot, and they continue to govern the large majority of employment injury cases in Bangladesh, since the EIS pilot covers only workers in the export-oriented RMG sector and EPZs.

Section 151 of the BLA establishes the fundamental obligation: an employer shall be liable to pay compensation to a worker if personal injury is caused to him by accident arising out of and in the course of employment. This formulation closely follows the standard wording of workers' compensation legislation in the common law tradition, and it incorporates the same conceptual vocabulary that has been the subject of extensive judicial interpretation in England and in the

subcontinent. The key phrases "accident," "arising out of," and "in the course of employment" are terms of art that have been developed through decades of case law, and their interpretation in the Bangladeshi context must be informed by this comparative jurisprudential heritage.

The term "accident" in workers' compensation law has traditionally been interpreted to exclude diseases of gradual onset, on the grounds that a disease develops through a continuous process rather than through a discrete identifiable event. This interpretation has been progressively modified in many jurisdictions to accommodate the recognition that many occupational diseases are effectively "accidents" in the sense that they arise from specific identifiable exposures or events, even if the manifestation of the disease is delayed. The BLA's provisions on occupational diseases in the Third Schedule to the Act recognize certain specified diseases as compensable if they arise from specified occupational exposures, but the list of recognized occupational diseases is outdated and incomplete, failing to include many contemporary occupational health hazards including musculoskeletal disorders, noise-induced hearing loss, and mental health conditions arising from workplace stress and harassment.

The phrase "arising out of and in the course of employment" establishes the causal nexus required for compensation: the injury must both arise from the employment (causal connection) and occur during the employment (temporal and spatial connection). The interpretation of this dual requirement has generated an enormous body of case law in England, Australia, and the subcontinent, addressing questions such as: whether an injury sustained during a journey to or from work is compensable; whether an injury sustained during a rest break or a recreational activity is compensable; and whether an injury caused by a third party's violence is compensable if it occurs in the workplace. The recent decision of the EIS Governance Board to extend coverage to commuting accidents from July 2024, in conformity with Article 7 of Convention No. 121, represents an important advance in the scope of compensable employment injury under the EIS framework, though this extension is not yet reflected in the statutory language of the BLA's Chapter VII.

Section 152 establishes the compensation payable in cases of death resulting from employment injury. The compensation is calculated as a multiple of the worker's monthly wage, with specific schedules establishing the minimum and maximum amounts payable. The compensation schedule has been revised periodically, but the levels of compensation remain significantly below what would be required to provide genuine income replacement for the dependents of deceased workers over the extended period for which they may need support. A worker who dies leaving a spouse and young children may leave behind dependents who need support for twenty or more years, but the lump-sum compensation payable under the BLA provides a much shorter period of income replacement.

The EIS pilot's approach to compensation for death cases addresses this structural inadequacy of the lump-sum compensation model by providing periodic payments rather than lump-sum payments, in conformity with the ILO's Convention No. 121. Periodic payments, structured as a percentage of the deceased worker's wage paid monthly to the qualifying dependents, provide income replacement over time in a way that matches the actual duration of the dependents' need for support. The shift from lump-sum to periodic payment is one of the most important structural

innovations of the EIS pilot, and its extension to the national workers' compensation system should be a priority of the reform agenda.

### 3.2 The Employers' Liability Doctrine and Its Limitations

The BLA's employment injury compensation provisions are formally based on the principle of employer's liability: the employer is liable to pay compensation to injured workers, and this liability is not contingent upon proof of the employer's negligence. This is the no-fault principle that distinguishes workers' compensation from common law tort liability, and it represents a significant improvement over the pre-workers' compensation legal framework in which injured workers had to prove employer negligence to obtain any remedy.

However, the employer's liability model has significant structural weaknesses that limit its effectiveness as a mechanism of social protection. The most fundamental weakness is that employer's liability depends upon the financial solvency of the individual employer: a worker who is seriously injured by a small or undercapitalized employer may receive little or no compensation in practice, because the employer simply does not have the financial resources to meet the liability. This is a pervasive problem in Bangladesh's garment sector, where many factories are small or medium-sized enterprises with limited capital and where factory closures are not uncommon.

The employer's liability model also creates perverse incentives for employers to conceal or minimize workplace injuries, since employers bear the direct financial cost of compensation. The suppression of workplace injury reporting has been extensively documented in the EIS pilot research, which found that owners often suppress reporting to protect their reputation, using threats, cash offers, or ID seizure, and that accidents are sometimes misclassified as commuting incidents while victims fear job loss if they report. These practices are not unique to Bangladesh; they reflect a structural tension inherent in any system in which the employer who is financially liable for injury is also the party with primary control over the reporting and documentation of injuries.

The insurance principle provides the theoretically correct solution to this problem: by requiring employers to insure their workers' compensation liability through a common insurance pool, the cost of individual injury claims is distributed across all participating employers, eliminating the insolvency risk and reducing (though not eliminating) the incentive for individual employers to suppress injury claims. Mandatory employment injury insurance, administered through a public or semi-public insurance institution, is the model recommended by Convention No. 121 and adopted in the most developed employment injury compensation systems. The development of a mandatory, insurance-based employment injury scheme in Bangladesh is the central reform priority in this area, and the EIS pilot is intended as the foundation for this development.

### 3.3 The Doctrine of "Arising Out Of and In the Course of Employment": Judicial Interpretation in Bangladesh

The judicial interpretation of the "arising out of and in the course of employment" requirement under the BLA and its predecessors has generated a body of case law that reflects both the

general common law jurisprudence on this question and the specific circumstances of the Bangladeshi labour market. The Labour Courts, and on appeal the High Court Division, have dealt with a range of difficult cases involving the boundaries of compensable employment injury, and their decisions provide an important body of doctrinal law that must be understood by any serious student of Bangladeshi labour law.

Cases involving injuries sustained during the journey to or from work have been particularly contested. The traditional view, reflecting the general common law position, was that journey injuries were not compensable unless the employer had a special interest in the particular mode of transport used, for example where the employer provided a vehicle for workers' transportation. The extension of EIS coverage to commuting accidents from July 2024 represents a departure from this traditional position, aligning Bangladesh with the international standard of Convention No. 121 and recognizing that the risks of the daily commute are an integral part of the working life of garment workers who may travel long distances in dangerous conditions to reach their workplaces.

Cases involving injuries caused by the acts of third parties have also been the subject of doctrinal development. The general principle is that an injury caused by a third party's violence is compensable if it arises out of the employment in the sense that the employment exposed the worker to the particular risk from which the injury resulted. A security guard who is assaulted by a person attempting to break into the employer's premises, or a bus driver who is attacked by a passenger, falls within this principle. However, an injury caused by a purely personal quarrel that happens to occur at the workplace would not be compensable, because the employment did not expose the worker to any particular risk of that specific harm.

The question of whether mental health conditions can be recognized as compensable employment injuries is one of the most important emerging issues in occupational injury law in Bangladesh. The traditional framework of workers' compensation law was developed in an era when compensable injuries were primarily physical, and the doctrinal categories of "accident," "injury," and "disease" were developed primarily with physical harms in mind. The growing recognition of the prevalence and severity of work-related mental health conditions, including depression, anxiety, post-traumatic stress disorder, and burnout, has created pressure for the extension of workers' compensation frameworks to cover these conditions. However, the extension raises significant evidentiary and definitional challenges: how is a mental health condition that arises from a combination of work-related and non-work-related stressors to be identified as an "employment injury"? How is the causation requirement to be established in the case of conditions with multiple contributing factors?

Bangladesh's BLA does not currently recognize mental health conditions as compensable employment injuries, and the EIS pilot's coverage is limited to physical injury and disability. This exclusion is inconsistent with the growing international recognition of work-related mental health as a major occupational health concern and with the recent legislative developments in Bangladesh addressing workplace harassment and violence, which recognize the psychological harm caused by these practices. The development of the national EIS framework should include careful consideration of how to extend coverage to work-related mental health conditions in a way that is both principled and administratively workable.

### 3.4 Occupational Diseases: The Scheduled Approach and Its Inadequacies

The legal framework for occupational disease compensation in Bangladesh uses the "scheduled" approach, which is common in workers' compensation systems worldwide: a list of specified occupational diseases is maintained, and workers who contract a listed disease as a result of specified occupational exposures are entitled to compensation as though they had suffered an employment accident. This approach has the advantage of simplicity and certainty: the worker does not need to prove causation in individual cases but merely needs to show that the disease is on the schedule and that the worker was engaged in the specified occupation.

However, the scheduled approach has a fundamental limitation: the list of scheduled diseases can quickly become outdated as new occupational health hazards emerge and as medical knowledge develops, leaving workers who contract new or evolving occupational diseases without compensation until the schedule is updated. The Third Schedule to the BLA, which lists the compensable occupational diseases, has not been comprehensively updated since the original enactment of the BLA in 2006, and it fails to include many occupational diseases that are well-recognized in the international occupational medicine literature.

Particularly notable omissions from the schedule include musculoskeletal disorders associated with repetitive work (which are extremely prevalent among garment workers and other manufacturing workers), noise-induced hearing loss (common in the jute and textile industries), mental health conditions associated with workplace stress and harassment, and several chemical-related diseases associated with exposure to the toxic dyes, solvents, and other chemicals used in garment production and in the leather tanning industry. The failure to schedule these diseases means that workers who suffer from them must establish causation through the general law of tort, which is both difficult and expensive, and which most workers lack the resources to pursue.

The ILO's list of occupational diseases, which was revised and expanded in 2010, provides the most current international standard for scheduled occupational diseases. The 2010 revision of the ILO list added a significant number of new conditions, including musculoskeletal disorders, mental and behavioural disorders, and specific conditions related to new chemical hazards. The development of the national EIS in Bangladesh should incorporate the ILO's 2010 list as the basis for a comprehensive and regularly updated schedule of compensable occupational diseases.

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## CHAPTER FOUR: THE EMPLOYMENT INJURY SCHEME PILOT: INCEPTION, ARCHITECTURE, AND CRITICAL ANALYSIS

### 4.1 The Historical Background and Policy Genesis of the EIS

The Employment Injury Scheme pilot did not emerge from a vacuum. It was the product of a long process of policy development that began in the aftermath of the Rana Plaza disaster of 2013 and that drew upon international experience with employment injury insurance, the recommendations of the ILO, and the specific concerns of international garment brands about the

sustainability and reputational risks associated with inadequate social protection for workers in their supply chains.

The Rana Plaza disaster exposed with brutal clarity the consequences of the absence of effective employment injury compensation for workers in Bangladesh's garment sector. More than 1,100 workers were killed and thousands more injured, many of them permanently disabled. The compensation provided to the victims and their families through the Rana Plaza Arrangement, a voluntary fund assembled with ILO facilitation from international brands, was a pioneering exercise in transitional justice and corporate responsibility, disbursing approximately USD 30 million to beneficiaries over several years. But the Rana Plaza compensation process was extraordinary: it depended upon the extraordinary visibility of the disaster, the extraordinary mobilization of international advocacy, and the extraordinary willingness of brands to contribute to a compensation fund that had no legal basis in Bangladesh's domestic law. The vast majority of employment injuries in Bangladesh's garment sector occurred and continue to occur without anything like the public attention or advocacy resources that made the Rana Plaza compensation possible.

The recognition that a permanent, systematic mechanism for employment injury compensation was needed, rather than relying on ad hoc responses to high-profile disasters, was the starting point for the development of the EIS. The "Berlin Declaration" signed at ILO Headquarters, which is referenced in several documents as laying the foundation for the EIS pilot, represented a commitment by key stakeholders, including international brands, employers' organizations, workers' organizations, and the Government of Bangladesh, to develop a sustainable employment injury scheme for the Bangladesh RMG sector.

The ILO's technical assistance in designing and implementing the EIS pilot has been central to the scheme's development. The ILO brought expertise in the design of employment injury insurance schemes from comparative experience with similar schemes in countries including Cambodia, Thailand, Malaysia, India, and the Philippines, as well as from its normative framework in Convention No. 121. The partnership with GIZ (German Development Cooperation) provided additional technical and financial resources for the scheme's implementation, and the financial contributions from the Netherlands, Canada, Germany, and the EU provided the funding base for the pilot phase.

### 4.2 The Architecture of the EIS Pilot: Coverage, Benefits, and Administration

The EIS Pilot, launched in June 2022, covers approximately 2.8 million workers (grown to approximately 4 million with subsequent expansion) in the export-oriented RMG sector and, from February 2025, workers in garment, leather, and footwear factories in Bangladesh's eight Export Processing Zones. This represents a remarkable expansion of coverage from the pilot's initial scope, and reflects both the operational success of the scheme and the government's political commitment to expanding its reach.

The scheme's coverage of insured contingencies includes work-related accidents causing death or permanent disability, with compensation paid in the form of periodic payments to the qualifying dependents of deceased workers and to permanently disabled workers. The extension of

coverage to commuting accidents from July 2024, approved by the EIS Governance Board at its eighth meeting on 13 May 2024, added a significant category of risk to the scheme's coverage, reflecting the recognition that the daily commute is one of the most dangerous parts of a garment worker's day. The EIS research found that road traffic accidents dominate causal factors in injury cases, affirming the relevance and importance of commuting accident coverage.

The benefit structure of the EIS Pilot is designed to provide benefits in conformity with ILO Convention No. 121. The scheme provides periodic payments to the dependents of deceased workers and to permanently disabled workers, calculated as a percentage of the worker's wage at the time of the injury. This periodic payment model represents a fundamental advance over the lump-sum compensation model of the BLA's Chapter VII, because it provides income replacement over time rather than a one-time payment that may be quickly exhausted.

The administration of the EIS Pilot is built on the Ministry of Labour and Employment's existing Central Fund infrastructure, adapted and supplemented with an Information Management System (openIMIS) developed specifically for the scheme. The openIMIS system supports the core business processes and workflows for the EIS, including the registration of beneficiaries, the review and approval of claims, and the payment of benefits. The governance structure is tripartite, with a Governance Board that includes representatives of the Government, employers' organizations, and workers' organizations, as well as representatives of the international partners who provide technical and financial support.

The claims processing system has achieved significant operational milestones since inception. The EIS has made significant progress establishing criteria and systems for compensation payouts, reviewing cases of work-related accidents and commencing payments to beneficiaries. The average processing time for a claim, with correct documentation, is approximately 30 days, which represents a reasonable performance for a new administrative system but which would need to be significantly faster to meet the immediate needs of families facing the sudden loss of a breadwinner's income.

The scheme's financial model, based on brand contributions of 0.019 percent of sourcing value, is explicitly transitional. The scheme's designers have been clear that the brand-financing model is appropriate for the pilot phase but that the national scheme will need to be financed through mandatory employer contributions, as recommended by Convention No. 121. The pilot phase serves the purpose of collecting data on the cost of benefits and the nature and frequency of accidents over time, information that is essential for the actuarial design of a mandatory insurance scheme.

### 4.3 Critical Analysis of the EIS Pilot: Achievements and Structural Limitations

The EIS Pilot represents a genuine and significant achievement in the development of social protection for Bangladeshi workers. For the first time, a systematic mechanism exists for providing income support to the families of garment workers who are killed or permanently disabled by workplace accidents, and this mechanism has actually delivered benefits to hundreds of families who would otherwise have been left without any systematic support. The extension of

the scheme to EPZ workers in February 2025, with the first Notices of Award handed over to EPZ beneficiaries in September 2025, represents a further expansion of this protection.

However, the EIS Pilot has significant structural limitations that must be candidly acknowledged and addressed in the design of the national scheme. The research conducted by the Centre for Policy Dialogue (CPD) in partnership with GIZ, presented at the UNDP seminar in September 2025, identifies several critical gaps and challenges.

First, the scheme does not yet fully comply with ILO Convention No. 121 because it lacks full medical services coverage. Workers who are injured in the course of employment and who qualify for periodic disability payments are not entitled, under the current EIS framework, to comprehensive medical care and rehabilitation services financed through the scheme. This is a major gap, because the costs of medical treatment and rehabilitation can be enormous, particularly for workers with serious injuries, and the absence of medical care coverage means that many injured workers are effectively unable to benefit fully from the income replacement provided by the periodic payments. Convention No. 121 requires states parties to provide medical care to injured workers, and the national EIS must incorporate a medical care component to achieve full compliance.

Second, the scheme suffers from systematic underreporting of accidents, which reflects both the structural incentives for employers to suppress injury reporting and the practical difficulties that workers face in reporting injuries and establishing their claims. The EIS research found widespread resistance from factories and workers to injury reporting, with owners using threats, cash offers, or identity document seizure to discourage workers from reporting injuries. Accidents are sometimes misclassified as commuting incidents, while victims fear job loss if they report. These problems are structural and will not be resolved by administrative improvements alone; they require a fundamental shift in the legal and institutional framework that makes the reporting of workplace injuries a normal and expected part of the employment relationship rather than a threatening and stigmatized act.

Third, the scheme's coverage of occupational diseases is extremely limited. The EIS pilot covers only work-related accidents causing death or permanent disability; it does not cover occupational diseases, which account for a large proportion of the total burden of work-related ill-health in Bangladesh. The ILO research on occupational disease coverage in comparable countries, including Thailand, Cambodia, Malaysia, India, and the Philippines, shows that comprehensive coverage of occupational diseases, including medical care and income replacement, is essential for an employment injury scheme that genuinely meets international standards.

Fourth, the gender dimensions of the EIS require careful attention. The CPD research found that female victims constitute 39.9 percent of RMG cases, reinforcing the need for gender-sensitive frameworks. However, the scheme's benefit design does not specifically address the gender-differentiated impacts of employment injury, including the particular vulnerability of pregnant workers, the disproportionate impact of injury on women who bear primary responsibility for childcare, and the specific occupational health risks that women face in garment work, including reproductive health risks associated with standing work, chemical exposure, and the stress of long working hours.

### 4.4 The Road to National Scaling: Legal, Institutional, and Operational Challenges

The development of a national EIS that covers all formal sector workers in Bangladesh, and progressively extends to the informal sector, is the central medium-term challenge in the field of employment injury compensation. The EIS pilot's feasibility research has developed a phased roadmap for national scaling that prioritizes three dimensions of reform: legal, institutional, and operational.

On the legal dimension, the research findings emphasize that the national EIS will require either an amendment to the Bangladesh Labour Act or a dedicated EIS law that mandates participation, includes penalties for non-compliance, and updates the occupational disease schedule. The current EIS pilot is built on the framework of the existing BLA, using its compensation schedules and procedures as a starting point, but the BLA framework has several inconsistencies and gaps that would need to be addressed before it could serve as the legal foundation for a mandatory national scheme. Some stakeholders argue for an independent EIS law and institution, on the grounds that this would provide greater clarity and flexibility; others argue that amending the BLA is more feasible and less costly. The final legal framework will be decided after further stakeholder consultation, but the decision will be consequential for the scope, coverage, and governance of the national scheme.

On the institutional dimension, the research recommends formalizing the Ministry of Labour and Employment as the oversight body for the EIS, strengthening the EIS Programme Support Unit, and establishing regional offices to decentralise service delivery. The current EIS administration is concentrated in Dhaka and relies heavily on factory-level accident reporting mechanisms that are often unreliable. Regional offices with trained case workers who can proactively investigate accident claims, verify beneficiary information, and support injured workers through the claims process would significantly improve the scheme's effectiveness and reach.

On the operational dimension, the research recommends creating a pre-registration system for workers and factories, integrating databases under the Labour Inspection Management System (LIMS), enhancing digital reporting of accidents, and extending coverage to occupational diseases and mental health conditions. The pre-registration of all workers covered by the scheme, linked to the National Identity Card system, would significantly simplify the claims process and reduce the risk of fraud or mistaken identity. The integration of the EIS database with the DIFE's factory registration and inspection database would enable the scheme's administrators to identify cases where factories have not been reporting accidents as required.

The phased expansion of the EIS to sectors beyond the RMG should be guided by a risk-based prioritization that identifies the sectors where the need for employment injury protection is greatest. The accident data collected by DIFE and analyzed in the EIS research shows that fatalities account for 76 percent of all cases nationally, with transport and service sectors experiencing the highest death tolls. The construction industry, which has a very high rate of workplace fatalities and lacks any effective social protection for injured workers, should be an early priority for inclusion in the national scheme. The brick kiln industry, with its combination of extreme physical hazards and exploitative employment arrangements, represents another high-priority sector for inclusion.

### 4.5 The EPZ Extension: Political Economy and Legal Implications

The extension of the EIS to EPZ workers in February 2025 is a particularly significant development, given the history of labour exceptionalism in Bangladesh's EPZs that was analyzed in Part Fourteen. The fact that EPZ workers are now included in the EIS, even though they had historically been excluded from the mainstream social protection framework, reflects a recognition that the sharp boundary between the EPZ and non-EPZ labour regimes is untenable from a human rights perspective and unsustainable from a political economy perspective.

The EPZ extension was made possible by an agreement between the BEPZA and the ILO and GIZ, signed in the months preceding February 2025, which provided a mechanism for implementing the EIS in EPZ factories through the BEPZA's regulatory framework. The first Notices of Award to EPZ beneficiaries, handed over in September 2025, were awarded to two families of deceased workers from Dhaka and Chattogram EPZs and one permanently disabled worker from Cumilla EPZ. These awards, which provide monthly financial support similar to a pension, represent the first systematic employment injury compensation payments to EPZ workers and mark a significant milestone in the normalization of labour rights in Bangladesh's EPZs.

The political economy of the EPZ extension reveals an interesting dynamic: the BEPZA, which had historically been one of the most resistant institutions to the extension of mainstream labour rights to EPZ workers, proved willing to support the EIS extension because the EIS did not threaten the BEPZA's control over the EPZ labour relations regime or impose significant costs on EPZ investors. The EIS, financed by brand contributions rather than employer contributions, did not raise the cost of production for EPZ factories during the pilot phase, making it politically acceptable to EPZ investors in a way that mandatory collective bargaining or strike rights would not be.

This political economy dynamic has important implications for the design of the national EIS. The transition from brand-financed to employer-financed contributions will inevitably encounter resistance from employer groups, including EPZ investors. The success of this transition will depend upon effective tripartite consultation, the development of credible evidence on the costs and benefits of mandatory employer contributions, and the use of the international accountability framework, including ILO monitoring and EU GSP+ conditions, to maintain political pressure for reform.

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## CHAPTER FIVE: THE WORKERS' PROFIT PARTICIPATION FUND: ARCHITECTURE, CRITIQUE, AND REFORM AGENDA

### 5.1 The Philosophical and Legal Foundations of Profit Sharing

The Workers' Profit Participation Fund (WPPF) represents one of the most theoretically interesting features of Bangladesh's labour law framework, because it embodies a claim about the distribution of enterprise profits that goes beyond the usual framing of labour relations as a

bilateral negotiation over wages and conditions. The WPPF asserts, in statutory form, that workers are entitled to share in the profits generated by the enterprise that employs them, not merely as a matter of contractual negotiation but as a matter of statutory right. This claim has deep philosophical roots and raises fundamental questions about the nature of property, the distribution of economic surplus, and the relationship between capital and labour in a market economy.

The historical background of profit sharing schemes goes back to the early industrial era, when a number of reformist employers in England and France experimented with profit-sharing arrangements as a means of aligning the interests of workers and employers, reducing labour conflict, and providing workers with an economic stake in the success of the enterprise. These early experiments were typically voluntary and paternalistic, motivated as much by the employers' desire for social peace as by any principled commitment to distributive justice. But they reflected an implicit recognition that the wage contract, which provides workers with a fixed return for their labour regardless of the profitability of the enterprise, distributes the risks and rewards of production in a way that may be unjust as well as economically inefficient.

The philosophical case for mandatory profit sharing rests on several distinct arguments. The first argument draws upon the Marxist analysis of exploitation: if workers' labour creates surplus value that is appropriated by the employer as profit, then profit sharing is a partial remedy for this appropriation, returning to workers a fraction of the surplus they have created. The second argument, more palatable to mainstream political philosophy, draws upon the principle of contribution: if workers contribute to the generation of enterprise profits through their effort, skill, and commitment, they have a legitimate claim to share in those profits, at least to the extent that the profits exceed what is needed to reward the capital contributed by investors. The third argument draws upon efficiency considerations: profit sharing creates incentives for workers to work more productively, to identify and implement efficiency improvements, and to take a longer-term view of the enterprise's interests, all of which may enhance enterprise productivity and profitability.

The legal structure of the WPPF under the Bangladesh Labour Act, 2006 is established in Chapter XV of the Act. The mandatory contribution rate is 5 percent of net profit before tax, which is divided equally between the Workers' Profit Participation Fund, from which workers receive direct payments, and the Workers' Welfare Fund, used for collective welfare purposes. The obligation to contribute applies to all establishments that earn a net profit, and failure to comply is a criminal offence.

### 5.2 The Structural Failures of the WPPF: Doctrinal and Empirical Analysis

The WPPF scheme, while philosophically interesting, has been extensively criticized as ineffective in practice. The principal structural failures of the scheme are well-documented and provide important lessons for the design of any future reform.

The first and most fundamental structural failure is the problem of profit concealment. Employers who wish to minimize their WPPF contributions have a range of accounting mechanisms available to them for reducing the apparent net profit of the enterprise subject to

WPPF contribution. These mechanisms include inter-company loans at above-market interest rates, transfer pricing between related companies, excessive director remuneration, and accelerated depreciation of assets. The detection and prevention of these profit concealment strategies requires sophisticated tax audit capacity that Bangladesh's regulatory agencies do not currently possess, and the penalties for WPPF non-compliance are too low to constitute a credible deterrent for large enterprises that stand to save significant sums through profit manipulation.

The Centre for Policy Dialogue and other research organizations have documented the systematic nature of WPPF non-compliance in Bangladesh. In the garment sector, the vast majority of factories do not report any net profit and therefore pay nothing to the WPPF. This pattern cannot be explained by the genuine unprofitability of the industry, since the garment sector as a whole generates very significant profits for its owners. It reflects systematic underreporting of profits for WPPF purposes, which is enabled by the weakness of the tax audit mechanism and the absence of effective monitoring of WPPF compliance by the relevant government agencies.

The second structural failure is the weakness of distribution mechanisms. Even in enterprises that do make genuine WPPF contributions, the distribution of the funds to individual workers frequently fails. The legal requirement for a Workers' Participation Committee in establishments covered by the Act, which is supposed to oversee the WPPF, is poorly implemented in practice. Workers in many enterprises are unaware of their entitlement to WPPF payments and have no effective mechanism for verifying whether their employer has made the required contributions or for enforcing their individual entitlements.

The third structural failure is the exclusion of the most vulnerable workers from the scheme's benefits. The WPPF applies only to workers in establishments covered by the BLA that earn a net profit. This excludes all workers in the informal sector, all workers in agricultural employment, all workers in establishments that are not covered by the BLA (including domestic workers, home-based workers, and many small enterprises), and all workers employed in enterprises that report no net profit (including the vast majority of garment factories, for the reasons discussed above). The WPPF scheme thus benefits primarily workers in large, profitable formal-sector enterprises, which are typically the enterprises that already provide the best conditions of employment.

The fourth structural failure is the inadequacy of the Workers' Welfare Fund's operations. The Workers' Welfare Fund, which is supposed to finance collective welfare provisions including housing, education, and recreation for workers, has been largely ineffective in practice. The Fund's administration is poorly regulated, its expenditures are subject to limited accountability, and its actual impact on worker welfare is difficult to assess because of the absence of systematic monitoring and reporting.

### 5.3 Reform Options for the Workers' Profit Participation Framework

The reform of the WPPF framework should address the structural failures identified above while preserving and enhancing the fundamental commitment to workers' participation in enterprise profits that the scheme embodies. Several reform options deserve consideration.

The first reform option is to strengthen the audit and enforcement mechanisms for WPPF compliance. This would involve improving the capacity of the Department of Labour for WPPF audit, increasing the penalties for non-compliance to levels that constitute a genuine deterrent, and establishing a mandatory disclosure framework under which employers are required to report their WPPF contributions and the basis for their profit calculations in a publicly accessible manner. The strengthening of audit capacity could draw upon the experience of revenue authorities in detecting profit manipulation in the tax context, since the tax minimization strategies used by employers to reduce their WPPF obligations are similar to those used to reduce their income tax liabilities.

The second reform option is to replace the net profit basis for WPPF contributions with a turnover or value-added basis, which is much more difficult to manipulate through accounting adjustments. A contribution calculated as a percentage of total turnover or value added would be less susceptible to the profit concealment strategies that make the current scheme ineffective, while still providing workers with a share of the economic activity generated by the enterprise.

The third reform option is to transform the WPPF into a broader worker ownership scheme, under which workers' WPPF entitlements are converted into equity shares in the enterprise that employs them. This would give workers a genuine stake in the enterprise's success, with all the benefits of ownership including the right to vote on major decisions and the right to benefit from appreciation in the enterprise's value. Worker ownership schemes have been implemented successfully in a number of countries, including the UK Employee Ownership Trust model and various forms of producer cooperatives in the Mondragon tradition. While the application of these models to Bangladesh's garment sector would require significant adaptation, the fundamental principle of worker ownership as a complement to employment income deserves serious consideration in the reform debate.

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## CHAPTER SIX: THE UNIVERSAL PENSION SCHEME: LEGAL ANALYSIS, CRITICAL ASSESSMENT, AND REFORM IMPERATIVES

### 6.1 The Policy Background and Institutional Architecture of the Universal Pension Scheme

The Universal Pension Scheme (UPS), launched by the Government of Bangladesh on 17 August 2023, is the most ambitious social security initiative in Bangladesh's post-independence history. The scheme aims, over time, to cover all citizens above the age of 18 with a contributory pension system, providing old-age income security to a population that has historically relied almost entirely on family support and informal arrangements for financial security in old age. The establishment of the National Pension Authority (NPA) to administer the scheme represents the creation of a new public institution with potentially transformative significance for the development of Bangladesh's social security system.

The UPS was introduced through the Universal Pension Management Act, 2023, which provided the legal basis for the scheme's establishment and governance. The scheme operates through four initial pillars: Probash, for Bangladeshi citizens working or staying abroad; Progoti, for officers and employees of privately owned and non-government institutions; Surakkha, for self-employed and informal sector workers; and Samata, for low-income workers who receive a partial government subsidy for their contributions. A fifth pillar, Prottoy, was planned for employees of government autonomous institutions including universities, but its introduction was delayed by significant resistance from the affected institutions.

The scheme's contribution structure requires subscribers between 18 and 50 years of age to contribute until the age of 60, while subscribers above 50 must contribute for a minimum of 10 years. The government provides a partial subsidy for the Samata scheme for low-income participants, recognizing that the poorest workers cannot be expected to self-finance a contributory pension on their own. The scheme provides a monthly pension upon reaching the age of 60, with the pension amount determined by the accumulated value of the subscriber's contributions and the investment returns earned on those contributions.

The design of the UPS reflects the defined contribution (DC) model, under which each subscriber's pension is determined by their own contributions and the investment returns on those contributions, rather than the defined benefit (DB) model, under which the pension is determined by a formula based on years of service and final salary regardless of the investment performance of the fund. The DC model has been increasingly adopted in pension reform worldwide because it eliminates the government's liability for funding shortfalls in the pension fund, but it also transfers investment risk entirely to the subscriber, meaning that workers who retire during periods of poor investment performance may receive much lower pensions than they expected.

### 6.2 The Controversy Over the Prottoy Scheme and University Teachers: A Case Study in Political Economy

The controversy over the Prottoy scheme, which was intended to replace the traditional pension arrangements for employees of public universities and other autonomous institutions from July 2024, provides a revealing case study in the political economy of pension reform in Bangladesh and in the tensions that arise when universal pension reform meets entrenched institutional interests.

Under the existing arrangements for public university employees, workers received a defined benefit pension financed by the government, which provided income security in retirement based on the worker's final salary and years of service. The Prottoy scheme would replace this with a defined contribution arrangement under the UPS framework, which many university teachers argued would leave them significantly worse off in retirement than the existing defined benefit pension. The Federation of Bangladesh University Teachers' Associations (FOBUTA) organized sustained and vocal opposition to the Prottoy scheme, arguing that it discriminated against university employees by replacing a defined benefit pension that remained available to civil servants (under the proposed Sebak scheme) with a less generous defined contribution arrangement.

The FOBUTA's critique highlighted a fundamental inconsistency in the government's approach to pension reform: while civil servants in the core government bureaucracy were to be covered by a Sebak scheme whose details had not been publicly announced, university employees and other autonomous institution workers were to be covered by Prottoy from July 2024. This differential treatment created a perception of discrimination that was both politically explosive and, on reflection, difficult to justify on principled grounds.

The university teachers' strike that followed the Prottoy announcement was one of the most disruptive episodes of industrial action in Bangladesh's public sector in recent memory. The fact that university teachers, a group that has historically been among the most educated and politically aware of Bangladesh's working population, were driven to strike over pension arrangements reflects the depth of the concerns about the UPS design and the inadequacy of the consultative process through which the scheme was developed. The FOBUTA's argument that the universal pension scheme was not truly universal, since it excluded the very civil servants whose inclusion would be most challenging for the government's fiscal position, was a powerful political critique that resonated with a wide audience.

The political turmoil created by the controversy over Prottoy was compounded by the broader political crisis of 2024, which saw the fall of the Sheikh Hasina government in August 2024. The incoming interim government of Muhammad Yunus was faced with a pension scheme that had generated significant public controversy, had low enrollment (only 372,401 people had registered across all schemes by August 2024, against a target of 100 million), and faced growing concerns about the security of contributions following the political change.

### 6.3 The UPS Enrollment Crisis: Legal, Institutional, and Political Dimensions

The enrollment figures for the UPS represent one of the most striking demonstrations of the gap between the ambition of a social policy initiative and the reality of its implementation. As of late 2024, the scheme had enrolled only approximately 373,000 subscribers against a long-term target of 100 million citizens. Daily new enrollments had fallen from 4,000-5,000 at the peak of the scheme's launch to only 10-20 per day by late 2024. Approximately 20 percent of existing policyholders had gone "dormant," meaning that they were not making regular contributions to their pension accounts.

The causes of the enrollment crisis are multiple and revealing. The scheme was perceived by many potential subscribers as having been introduced hurriedly and without adequate consultation, motivated more by political objectives than by genuine concern for workers' retirement security. The political economy of the scheme's design, which reflected the previous government's priorities and institutional interests, created specific problems: the exclusion of civil servants from the Prottoy pillar while they were told they would receive a separate and potentially better Sebak scheme created a perception of unfairness that undermined broader confidence in the UPS.

The political change of August 2024 created additional uncertainty about the scheme's future. Many subscribers who had enrolled felt confused and feared that the new interim government might discontinue the scheme, leading them to stop making contributions. This fear was

understandable, given the history of social policy reversals following changes of government in Bangladesh, but it reflected a failure of the scheme's design to build sufficient institutional independence and legal protection to insulate it from political risk.

The scheme's financial attractiveness was also called into question. The interest rate applied to UPS contributions, set at 8 percent, was significantly below the rates available through alternative savings instruments such as government savings certificates (which offered rates above 11 percent) and the general provident fund for government employees (which offered rates of 13 percent). The failure to make the UPS financially competitive with alternative savings instruments meant that workers who had access to these alternatives had little financial incentive to join the UPS, while workers who lacked access to alternatives (primarily informal sector workers) might benefit most from the scheme but faced the greatest difficulties in making regular contributions.

The comparison with India's National Pension System (NPS), which the UPS was modeled upon, is revealing. The NPS, launched in India on 1 January 2004 for central government employees and progressively extended to other categories of workers, provides withdrawal and exit benefits including a lump-sum payment at retirement and partial withdrawal before retirement age that are not available in Bangladesh's UPS. The absence of these flexibility features in the UPS design has been identified as a significant deterrent to enrollment among workers who may need to access their savings before retirement age in the event of a financial emergency.

### 6.4 Jurisprudential and Philosophical Dimensions of Universal Pension Design

The design of a universal pension scheme raises fundamental questions of distributive justice that deserve careful philosophical analysis. The most basic question is whether a contributory scheme, which ties entitlement to pension benefits to a prior history of contributions, is consistent with the principle that all citizens are entitled to basic income security in old age as a matter of human right. A purely contributory scheme will provide no benefit to workers who cannot make regular contributions throughout their working lives, which will include many of the poorest and most vulnerable workers: those who are employed intermittently, who work in the informal economy without stable incomes, who take career breaks for childcare or illness, and who are trapped in poverty that leaves no margin for long-term savings.

The Rawlsian analysis of pension design would support a scheme that specifically protects the retirement security of the least advantaged members of society, which means that a purely contributory scheme with no redistributive element is insufficient from the perspective of justice as fairness. Rawls's difference principle requires that the scheme be arranged to maximize the retirement security of the worst-off workers, which implies significant government subsidies for low-income contributors and a guaranteed minimum benefit that is not dependent on contributory history.

The capabilities approach similarly supports a minimum guaranteed pension that is available to all citizens regardless of their contributory history, on the grounds that the capability for basic income security in old age is a central human capability whose denial constitutes a fundamental deprivation of human well-being. The UPS's Samata scheme, which provides a government

subsidy for low-income contributors, is a step in the direction that the capabilities approach supports, but the subsidy is partial and the scheme remains contributory, meaning that workers who cannot make even the minimum contribution receive no benefit.

The feminist analysis of pension design is particularly relevant to Bangladesh, where women's labour force participation patterns differ significantly from men's in ways that disadvantage women under contributory pension systems. Women are more likely than men to have intermittent employment histories because of childcare responsibilities; they are more concentrated in informal and part-time employment; they typically earn lower wages, resulting in lower pension contributions; and they live longer than men on average, meaning that their pension income needs to last longer. A pension scheme designed around the assumption of continuous full-time formal employment systematically disadvantages women, and the design of the UPS, which provides no special provisions for women's distinctive labour market experiences, is open to this feminist critique.

The concept of a basic citizens' pension, which would provide a flat-rate pension to all citizens above pension age regardless of their contributory history, provides a conceptually simple and distributively attractive alternative to the contributory model that deserves serious consideration in the reform debate. A basic citizens' pension, financed from general tax revenues, would eliminate the exclusion of the most vulnerable workers from pension protection, provide a predictable and reliable income floor for all citizens in old age, and be administratively simpler than a contributory scheme that requires the tracking and attribution of individual contributions over a working lifetime. Several developing countries, including South Africa, Botswana, and Mauritius, have implemented universal non-contributory pensions with significant success in reducing old-age poverty.

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## CHAPTER SEVEN: SOCIAL PROTECTION FOR INFORMAL WORKERS: THE CENTRAL CHALLENGE OF BANGLADESH'S WELFARE STATE DEFICIT

### 7.1 Defining Informality and Mapping the Informal Workforce

Approximately 85 percent of Bangladesh's workforce is employed in the informal economy, a figure that represents one of the highest rates of informality in Asia and that has profound implications for the reach and effectiveness of any social protection system that is built around formal employment relationships. Understanding the nature and diversity of informal employment in Bangladesh is essential to designing social protection mechanisms that can genuinely reach the most vulnerable workers.

The concept of informal employment encompasses a wide and heterogeneous range of work arrangements that share the characteristic of not being covered by formal employment contracts, social security contributions, and statutory labour protections. In Bangladesh, informal employment includes agricultural workers employed on seasonal or casual bases; domestic workers employed in private households; home-based workers who perform productive tasks for piece-rate payment as part of subcontracting chains; self-employed micro-entrepreneurs

including rickshaw pullers, street vendors, and small traders; casual construction workers; and workers in the vast number of small enterprises that operate outside the formal sector registration system.

The ILO's statistical framework for measuring informality, adopted at the 17th International Conference of Labour Statisticians in 2003, distinguishes between the informal sector (comprising enterprises that are unregistered or unincorporated and that are below a threshold size) and informal employment (comprising employment arrangements that lack the characteristics of formal employment, including a written contract, social security coverage, and entitlement to statutory paid leave). These two concepts overlap significantly but are not identical: informal employment is found both in the informal sector and in formal sector enterprises (where employers may use informal arrangements to avoid the costs and obligations of formal employment), while the informal sector may include some formally employed workers.

The gender dimensions of informal employment in Bangladesh are particularly pronounced. Women are significantly more likely than men to be employed in the most precarious and lowest-paid forms of informal employment: domestic service, home-based garment assembly, and agricultural day labor. The concentration of women in these forms of employment reflects the intersection of gender inequality in the labour market with the specific structure of Bangladesh's economy, in which the formal garment sector provides relatively better-paid employment for women but cannot absorb all of the female labour force that enters the market.

### 7.2 The Inadequacy of Existing Social Protection for Informal Workers

The formal social protection system of Bangladesh provides virtually no protection for informal sector workers. The BLA's provisions on minimum wages, working time, leave, maternity benefits, and occupational safety are legally applicable only to workers in establishments covered by the Act, and even within the Act's scope, enforcement in small enterprises is virtually non-existent. The WPPF applies only to workers in profitable formal-sector enterprises. The Employment Injury Scheme covers only workers in the RMG sector and EPZs. The Universal Pension Scheme is in principle available to informal workers through the Surakkha pillar, but the scheme's contributory nature means that it is inaccessible to the very poorest workers who lack a reliable income margin for saving.

The government's social assistance programs, which include old-age allowances, widow's allowances, disability benefits, and various food security programs, provide modest safety nets for some categories of vulnerable informal workers, but they are funded from general tax revenues rather than contributory social insurance, they are means-tested and therefore targeted at only the poorest, and they are subject to significant coverage gaps, administrative inefficiencies, and political manipulation.

The absence of unemployment insurance is particularly damaging for informal workers, who face the highest risk of income disruption through job loss, illness, and seasonal fluctuation. In the absence of unemployment insurance, informal workers who lose their income must rely entirely on their savings, if any, and on family support. In a context of very low wages and subsistence living standards, most informal workers have no meaningful savings buffer, and the

family support networks that have traditionally provided informal social protection are under increasing strain as urbanization separates workers from their extended family networks.

### 7.3 Innovative Approaches to Social Protection for Informal Workers: International and Domestic Experience

The challenge of extending social protection to informal workers is a global one, and international experience provides a range of innovative approaches that may be relevant to the Bangladeshi context. The analysis of comparable developing countries' experience is particularly instructive.

India's Unorganised Workers' Social Security Act, 2008, and the subsequent Code on Social Security, 2020, represent the most ambitious legislative attempt in South Asia to extend social security coverage to informal sector workers. The Code on Social Security consolidates multiple existing social security statutes and creates a framework for the extension of social security to all workers, including those in the informal economy. The implementation of this framework through the E-Shram portal, which aims to register all informal workers in India through a simple mobile-based registration process, provides a technological model that Bangladesh might adapt. However, the Indian experience also demonstrates the significant challenges of implementation: E-Shram enrollment has proceeded slowly, the integration of the registration system with actual benefit delivery has been problematic, and the coverage and adequacy of benefits for informal workers remain far below the standards available to formal sector workers.

Brazil's integrated social protection system, which provides significant benefits to informal and self-employed workers through the National Social Insurance Institute (INSS), offers a different model. The Brazilian system has achieved relatively high coverage of informal workers through a combination of mandatory registration requirements, simplified contribution arrangements for micro-entrepreneurs, and strong enforcement mechanisms for the largest informal enterprises. The Brazilian experience shows that it is possible to achieve significant social security coverage for informal workers in a developing country, but it requires sustained political commitment, significant administrative investment, and effective enforcement mechanisms.

Thailand's Social Security Fund, which covers formal sector workers, is complemented by a universal health coverage system that provides all Thai citizens with access to health care regardless of their employment status. The separation of health care coverage (universal, tax-financed) from employment injury and old-age insurance (contributory) reflects a recognition that some social security contingencies are too important to leave to a contributory system that will inevitably exclude the poorest and most vulnerable workers.

For Bangladesh, the most promising approach to extending social protection to informal workers combines several elements. First, a universal health care scheme, financed from general tax revenues and available to all citizens regardless of employment status, would provide the most fundamental social protection of all: access to medical care. The constitutional commitment to the right to health, and Bangladesh's obligations under the ICESCR, provide a strong normative foundation for such a scheme. Second, the Universal Pension Scheme should be redesigned to provide a basic non-contributory pension for all citizens above pension age, supplemented by a

contributory system for those who can afford to contribute. Third, the Employment Injury Scheme should be progressively extended to cover all formal sector workers, and eventually informal sector workers, through a phased expansion program. Fourth, a simplified registration and contribution system for informal sector workers, modeled on India's E-Shram portal but improved based on the lessons of the Indian experience, should be developed to enable informal workers to participate in the EIS and UPS.

### 7.4 Domestic Workers: The Invisible Workforce and Their Social Protection Rights

Domestic workers occupy a particularly marginalized position in Bangladesh's social protection landscape. They are estimated to number between 2 and 5 million, the vast majority of them women, and they work in private households without the visibility and collective organization that might support advocacy for their rights. The 2025 amendment to the BLA has, for the first time, included domestic workers within the definition of "worker," creating a formal basis for their entitlement to the Act's protections. But the formal inclusion of domestic workers in the Act's coverage is only the beginning of a much longer process of developing effective social protection for this extraordinarily vulnerable group.

The particular social protection needs of domestic workers reflect the specific characteristics of their work. Domestic workers are employed in private homes, which are invisible to the labour inspection system; they are typically employed by individual households without written contracts; they may live in the employer's home, creating a situation of 24-hour dependency and vulnerability; they lack the collective organization that might support the assertion of their rights; and they perform work that is simultaneously economically important and socially undervalued.

The ILO's Convention No. 189 (Domestic Workers Convention, 2011), which Bangladesh has not ratified, establishes a comprehensive framework of rights for domestic workers including the right to a written contract, minimum wage coverage, limits on working time, rest periods, privacy in the employer's home, and social security coverage. The development of effective social protection for domestic workers in Bangladesh requires at minimum the ratification of Convention No. 189 and the development of domestic legislation that gives effect to its standards in the specific context of the Bangladeshi domestic service sector.

The challenges of enforcement of social protection rights for domestic workers, given the invisibility of domestic work and the private sphere in which it occurs, require innovative solutions that go beyond the traditional labour inspection model. Community-based organizations of domestic workers, such as those that have been developed in several Asian countries including India, Thailand, and the Philippines, can play an important role in connecting domestic workers to information about their rights, supporting the assertion of claims against abusive employers, and advocating for legislative protection. The development of such organizations in Bangladesh, supported by the women's movement and by international solidarity from domestic workers' organizations, is a medium-term priority for the protection of this most vulnerable category of workers.

# CHAPTER EIGHT: MATERNITY PROTECTION AND SOCIAL SECURITY: JURISPRUDENTIAL ANALYSIS AND REFORM

## 8.1 The Constitutional and International Legal Framework for Maternity Protection

Maternity protection, understood as the ensemble of legal provisions that protect pregnant workers and new mothers from the economic consequences of pregnancy and childbirth, and that provide for adequate leave and health care during and after pregnancy, is one of the oldest and most fundamental concerns of labour law and social security. It is recognized as a fundamental right in international law: ILO Convention No. 183 (Maternity Protection Convention, 2000) requires states parties to provide at least 14 weeks of maternity leave (with at least 6 weeks of compulsory leave after delivery), cash maternity benefits, health protection for pregnant and breastfeeding workers, protection from dismissal and discriminatory treatment, and the right to return to the same or an equivalent position after maternity leave. The accompanying Recommendation No. 191 calls for an extension of maternity leave to 18 weeks.

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Bangladesh has ratified, requires states parties to take appropriate measures to prevent dismissal on the grounds of maternity and to introduce maternity leave with pay or with comparable social benefits. CEDAW's General Recommendation No. 25 (2004) on temporary special measures emphasizes that genuine substantive equality between men and women in employment requires positive measures to address the structural disadvantages that women face in the labour market, including those arising from pregnancy and maternity.

The Bangladesh Labour Act, 2006 provides for maternity leave of 16 weeks (8 weeks before and 8 weeks after delivery) and a maternity benefit equal to the worker's wages for the period of leave, payable entirely by the employer. The 2025 amendment has introduced certain modifications to the maternity protection framework, reflecting the growing international recognition of the importance of adequate maternity protection for gender equality in employment. However, the fundamental structural problem of employer-funded maternity benefits, which creates a financial incentive for employers to discriminate against women of childbearing age, remains to be addressed.

## 8.2 The Employer Liability Model and Its Gender Equity Implications

The requirement that the employer pay the full cost of maternity benefits is a structural feature of the Bangladeshi maternity protection framework that has been extensively criticized by feminist labour law scholars and women's rights advocates. The argument against the employer-funded model is straightforward: when employers bear the full cost of maternity benefits, they have a direct financial incentive to avoid hiring women of childbearing age or to discriminate against pregnant workers and mothers. This incentive creates a structural barrier to women's economic participation that directly undermines the goal of gender equality in employment.

The feminist legal theory analysis of this problem draws upon the work of scholars including Joanne Conaghan, Judy Fudge, and Vicki Schultz, who have argued that the design of maternity protection law reflects and reinforces a gendered understanding of care work as "women's work"

that is extraneous to the primary employer-employee relationship. The employer-funded model treats the costs of maternity protection as a special burden imposed on employers who happen to employ women, rather than as a social cost to be borne collectively by society as a whole.

The socialized model of maternity protection, in which the cost of maternity benefits is distributed across all employers and workers through a social insurance fund (as in the maternity benefit provisions of most European countries and many developing countries), eliminates the individual employer's incentive to discriminate by removing the direct financial cost of maternity from the individual employment relationship. In the socialized model, the employer who employs a pregnant worker pays the same social insurance contribution as any other employer; the cost of the maternity benefit is paid from the common insurance fund rather than directly by the employer. This model is both more equitable (it distributes the social cost of maternity collectively) and more effective in protecting women's employment rights (it eliminates the financial incentive for discrimination).

The development of a socialized maternity benefit system in Bangladesh would require the establishment of a social insurance mechanism that covers all employed women, including those in the informal sector. The National Health Insurance Scheme, currently under development, and the national Employment Injury Scheme provide potential institutional frameworks within which a socialized maternity benefit could be implemented. The progressive development of such a system should be an explicit goal of the social security reform agenda.

### 8.3 Paternity Leave, Parental Leave, and the Challenge of Work-Family Balance

The traditional framing of maternity protection as a benefit provided exclusively to women reflects and reinforces the gendered division of labour in which women bear primary responsibility for childcare. The development of paternity leave and parental leave frameworks, which allow fathers as well as mothers to take time off work around the birth of a child and to share childcare responsibilities, is an important element of a comprehensive approach to work-family balance that challenges rather than reinforces gendered assumptions about care work.

The Bangladesh Labour Act, 2006 provides no statutory entitlement to paternity leave for fathers. This gap reflects a traditional understanding of parenthood as exclusively a female concern in the employment context, and it has significant negative consequences both for gender equality and for the well-being of children and families. Fathers who wish to be present at the birth of their child, to support their partners during the early weeks of parenthood, and to develop the parenting skills and attachments that are important for child development are entitled to do so only at the discretion of their employers, without any legal protection.

The development of a statutory paternity leave entitlement in Bangladesh, even if initially of short duration, would be a significant symbolic and practical step toward a more gender-equal approach to work-family balance. International experience shows that statutory paternity leave, even when initially of short duration, gradually evolves toward more extended parental leave arrangements as social norms and political attitudes toward fathers' care responsibilities shift. The ILO's Maternity Protection Convention, 2000 (Convention No. 183) does not specifically address paternity leave, but the accompanying Recommendation No. 191 encourages states to

consider "other types of leave related to the birth or adoption of a child," which has been interpreted to include paternity leave.

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## CHAPTER NINE: OCCUPATIONAL HEALTH AND SAFETY BEYOND RANA PLAZA: THE CONTINUING CRISIS AND THE REFORM FRAMEWORK

### 9.1 The Institutional Framework for Occupational Health and Safety: DIFE and Its Limitations

The Department of Inspection for Factories and Establishments (DIFE), established under the Bangladesh Labour Act, 2006, is the primary government agency responsible for the inspection and enforcement of occupational health and safety standards in Bangladesh. DIFE's mandate is vast: it is responsible for inspecting all establishments covered by the BLA, including thousands of garment factories, hundreds of other manufacturing enterprises, and a large number of commercial and service sector establishments, to ensure compliance with the Act's occupational health and safety provisions.

DIFE's institutional capacity has been significantly strengthened in the years since the Rana Plaza disaster, through a combination of increased staffing, improved training, and the development of a comprehensive factory database. Before 2013, DIFE had fewer than 50 inspectors for more than 100,000 registered establishments; by 2025, the inspectorate has grown substantially, with hundreds of inspectors supported by a systematic inspection scheduling system. The development of the Accord/International Accord parallel inspection system in the RMG sector has created a benchmark for professional safety inspection that has influenced DIFE's own inspection methodology.

However, DIFE continues to face significant structural limitations that prevent it from fulfilling its mandate effectively. The most fundamental limitation is the sheer scale of the inspection task relative to DIFE's resources: even with significant expansion, the inspectorate cannot realistically conduct thorough inspections of all establishments on a frequency that would ensure meaningful compliance with OHS standards. The prioritization of inspection resources to high-risk establishments, particularly large garment factories and industries with high injury rates, is necessary but inevitably leaves large numbers of smaller and informal establishments without effective oversight.

The quality of inspection is another significant concern. Effective OHS inspection requires not merely a formal visit to the establishment but a thorough technical assessment of the physical conditions of work, the mechanical and electrical systems, the chemical hazards, and the management systems for OHS. This requires inspectors with technical expertise in a range of disciplines, including structural engineering, electrical engineering, chemical safety, and industrial hygiene. The development of this expertise within DIFE has been a priority of the post-Rana Plaza capacity-building effort, but significant gaps remain.

The enforcement mechanism for OHS violations also has structural weaknesses. The fines for OHS violations under the BLA are set at levels that may have been realistic when the Act was enacted in 2006 but that are now insufficient to constitute a meaningful deterrent for large enterprises. An employer who faces a fine of BDT 25,000 (approximately USD 225) for a serious OHS violation that imposes costs of BDT 1,000,000 (approximately USD 9,000) to remedy has no rational financial incentive to comply with the law. The reform of the penalty structure to align fines with the actual cost of non-compliance and the actual harm caused is a necessary element of any serious OHS enforcement strategy.

### 9.2 The International Accord and Its Significance for Governance of OHS

The International Accord for Health and Safety in the Textile and Garment Industry, which took effect in 2021 as the successor to the Bangladesh Accord established after Rana Plaza, continues to operate as a parallel OHS governance system in Bangladesh's RMG sector alongside the state regulatory framework. As of 2024-2025, the International Accord operates in Bangladesh and has expanded its scope to include other garment-producing countries, demonstrating the model's perceived effectiveness as a form of transnational private labour regulation.

The International Accord's significance for OHS governance in Bangladesh extends beyond its direct impact on the safety conditions of the factories it covers. It has established a professional benchmark for factory safety inspection methodology, created a database of factory safety conditions that can be used to monitor trends and identify persistent problems, and provided a model for the accountability of international brands for OHS conditions in their supply chains that has influenced both regulatory development and corporate social responsibility practices globally.

The legal analysis of the Accord raises important questions about the nature of private regulatory authority in the field of occupational health and safety. The Accord's inspection and remediation requirements are legally binding on the signatory brands through their commitment to the Accord itself; they are binding on factories through the brands' commercial agreements, which incorporate Accord compliance as a condition of continued sourcing. The Accord's complaints mechanism, which allows unions and workers to bring complaints against brands that fail to honor their Accord commitments, represents a form of quasi-adjudicative authority that operates outside the formal state legal system.

The theoretical analysis of private regulatory systems like the Accord draws upon the literature on "responsive regulation" (Ayres and Braithwaite), "meta-regulation" (Hess and Dunoff), and "transnational private governance" (Cafaggi and others). These frameworks provide conceptual tools for understanding how private regulatory systems can complement and in some cases substitute for state regulation in contexts where the state's regulatory capacity is limited. They also identify the limitations of private governance: its dependence on the commercial interests of the powerful parties (brands) who finance it, its susceptibility to "capture" by those interests, and its lack of democratic legitimacy in comparison to state regulation.

For Bangladesh, the optimal governance framework for OHS in the RMG sector is likely to be a hybrid system that combines the professional inspection capacity and international accountability

of the International Accord with the legal authority and democratic legitimacy of the state regulatory system. The progressive strengthening of DIFE's capacity, informed by the Accord's methodology and drawing on the data generated by the Accord's inspection program, is the pathway toward a domestic regulatory system that can eventually assume primary responsibility for OHS governance in the sector.

### 9.3 Mental Health as an Occupational Health Issue: The Emerging Legal Framework

The recognition of work-related mental health conditions as occupational health concerns requiring legal and institutional responses is one of the most significant recent developments in the field of occupational health and safety law. The World Health Organization estimates that depression and anxiety disorders account for a substantial proportion of the global burden of disease and that work-related stress is a significant contributing factor. In Bangladesh's garment sector, the combination of long working hours, excessive production targets, pervasive harassment, and economic insecurity creates conditions that are highly conducive to work-related mental health problems.

The legal framework for addressing work-related mental health in Bangladesh is essentially non-existent. The BLA's occupational health and safety provisions are focused almost entirely on physical hazards, and work-related mental health conditions are not recognized as compensable occupational diseases. The 2025 amendment's provisions on workplace harassment and violence, and the requirement to establish workplace anti-harassment committees, represent an important step toward recognizing the psychological harm caused by workplace misconduct, but they do not create a comprehensive framework for identifying, preventing, and compensating work-related mental health conditions.

The ILO's Guidelines on Mental Health at Work (2022) provide detailed guidance for employers and governments on the prevention and management of work-related mental health conditions. These guidelines identify three levels of intervention: organizational-level interventions that address the work environment and psychosocial risk factors; individual-level interventions that provide support to workers who experience mental health difficulties; and return-to-work support for workers who have been absent from work due to mental health conditions. The incorporation of mental health considerations into Bangladesh's OHS governance framework, drawing on the ILO's guidelines, should be an explicit element of the national OHS reform agenda.

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## CHAPTER TEN: GRATUITY, PROVIDENT FUND, AND RELATED WELFARE PROVISIONS: LEGAL ANALYSIS

### 10.1 The Legal Architecture of Gratuity Under the Bangladesh Labour Act

Gratuity is a lump-sum payment made to a worker at the end of employment as recognition of the worker's long service to the employer. The Bangladesh Labour Act, 2006 provides for a statutory gratuity entitlement in Section 27, which requires employers to pay gratuity to workers who have completed at least one year of continuous service with the employer, calculated at the

rate of 30 days' wages for each completed year of service for workers who have been with the same employer for less than 10 years, and 45 days' wages for each completed year of service for workers who have been with the employer for 10 years or more.

Gratuity serves an important social protection function in the absence of a comprehensive unemployment insurance or pension system. For a worker who has spent many years in the same employment and who faces dismissal or retrenchment, the gratuity payment provides a lump-sum that can help bridge the transition to new employment or, in the case of an older worker, supplement the meager old-age allowance from the government's social assistance program. However, gratuity has significant limitations as a social protection mechanism.

The most fundamental limitation is that gratuity only benefits workers who achieve a minimum period of continuous service with a single employer. Workers who are employed on short-term or probationary contracts, who are dismissed during their probationary period, or who change employment frequently because of the instability of their employment have little or no access to gratuity. In Bangladesh's garment sector, where employers frequently use probationary periods, temporary contracts, and seasonal employment patterns to avoid the obligations of the Act, the majority of workers may not accumulate the minimum one year of continuous service required for gratuity entitlement.

The second limitation is that gratuity is not protected against employer insolvency. If the employer who owes gratuity becomes insolvent, the worker's claim for gratuity ranks as an unsecured creditor's claim, which typically means that little or nothing is actually received. The legal framework for the protection of workers' claims in the event of employer insolvency is inadequate in Bangladesh, reflecting a failure to recognize the special vulnerability of workers as creditors who cannot easily protect themselves against insolvency risk by diversifying their economic relationships.

The third limitation is the absence of a provident fund scheme for private sector workers. Government employees and workers in certain public sector enterprises benefit from a provident fund scheme, under which both the employer and employee contribute a proportion of wages to an individual account that accumulates over time and is paid to the worker upon retirement or resignation. This kind of provident fund, which combines the income replacement function of a pension with the individual savings account features of a personal savings plan, provides much better retirement income security than gratuity alone. The absence of a mandatory provident fund for private sector workers is a significant gap in Bangladesh's social security framework that leaves the vast majority of formal sector workers dependent upon the inadequate gratuity payment and the voluntary UPS for their retirement income.

### 10.2 Compulsory Group Insurance: The Regulatory Framework and Its Limitations

The Bangladesh Labour Act, 2006 requires employers of establishments with 100 or more permanent workers to provide compulsory group insurance coverage for their workers, under the terms of a government-approved group insurance scheme. This requirement is intended to provide workers with a basic level of life insurance and disability coverage, financed by the employer, as a complement to the workers' compensation provisions of Chapter VII.

In practice, the compulsory group insurance requirement has been poorly enforced and its coverage is limited. Many employers with 100 or more permanent workers have not complied with the requirement, either because they are unaware of it or because they calculate that the risk of enforcement is low relative to the cost of compliance. DIFE's inspection system has not consistently monitored compliance with the group insurance requirement, and the penalties for non-compliance are insufficient to compel compliance.

The design of the compulsory group insurance scheme also has technical limitations. The insurance benefits provided are typically much smaller than the compensation that would be payable under an effective employment injury scheme, and the connection between the group insurance and the workers' compensation framework of Chapter VII is unclear, creating the risk of double liability for employers in injury cases or of workers receiving inadequate compensation when they should be entitled to more.

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## CHAPTER ELEVEN: THE NATIONAL SOCIAL SECURITY STRATEGY AND THE SOCIAL PROTECTION FLOORS FRAMEWORK

### 11.1 The Architecture of Bangladesh's National Social Security Strategy

Bangladesh's National Social Security Strategy (NSSS), originally adopted in 2015 and updated through subsequent Action Plans, provides the overarching policy framework within which the specific social security schemes analyzed in the preceding chapters are situated. The NSSS was developed with significant support from international partners, particularly the World Bank, the ILO, and UNICEF, and it explicitly adopts the Social Protection Floors framework of ILO Recommendation No. 202 as its organizing principle.

The NSSS organizes Bangladesh's social protection programs around a lifecycle approach, identifying the social protection needs of different population groups across the life course: children and adolescents, women, working-age adults, and elderly persons. For each lifecycle phase, the NSSS identifies the key risks and vulnerabilities and the existing programs and gaps in coverage. The strategic objective is to progressively develop an integrated and comprehensive social protection system that provides effective coverage of the main social risks for all Bangladeshi citizens.

The NSSS identifies four strategic areas: consolidation of programs (reducing the fragmentation of the existing social protection system by merging overlapping programs), improvement of coverage (extending social protection to the groups currently uncovered, particularly informal workers), improvement of adequacy (increasing the benefit levels of existing programs to make them more adequate for their stated purposes), and improvement of administration (strengthening the administrative systems for registration, payment, and accountability in the social protection system).

The implementation of the NSSS has been partial and uneven. Some progress has been made on program consolidation, particularly through the development of a unified social protection

registry (G2P or Government-to-Person) that aims to provide a single database of social protection beneficiaries. Progress on extending coverage to informal workers has been more limited, partly because of the fiscal constraints on the expansion of social assistance programs and partly because of the administrative challenges of reaching informal workers who are not in regular contact with government agencies.

### 11.2 Fiscal Space and Political Economy of Social Security Expansion

The development of a comprehensive social security system in Bangladesh faces real fiscal constraints. Bangladesh's tax-to-GDP ratio is among the lowest in Asia, at approximately 8-9 percent, reflecting a long history of tax evasion, inadequate tax administration, and political resistance to tax reform from the business community. This low tax revenue significantly limits the government's capacity to finance universal social protection from general revenues and creates pressure for contributory financing models that may exclude the most vulnerable workers.

However, the fiscal constraints on social security expansion are frequently overstated by opponents of reform. Several studies have shown that Bangladesh has significant untapped fiscal potential, particularly in the areas of personal income tax, corporate income tax, and value-added tax, where compliance rates are very low and evasion is widespread. The political economy of tax reform in Bangladesh, in which the business community that would bear the primary cost of increased taxation exercises significant political influence through its connections to the major political parties, has historically prevented the development of the tax capacity that would make a more ambitious social security program feasible.

The ILO's fiscal space analysis for social protection in Bangladesh, which has been conducted in connection with the NSSS implementation support, has identified several sources of additional revenue that could finance expanded social protection without raising the overall tax burden to unsustainable levels. These include improved enforcement of existing tax obligations, the elimination of inefficient and regressive tax expenditures, and a modest increase in the contribution rates for formal sector workers and employers. The political feasibility of these fiscal reforms depends upon the development of a social compact that connects tax reform to visible and credible improvements in social protection, health care, and education.

The question of whether international trade and investment frameworks can be leveraged to support the financing of social protection in Bangladesh is increasingly relevant in the context of EU GSP+ conditionality and the growing attention of international brands to the social protection conditions in their supply chains. The EIS pilot's brand-financed model demonstrates that international commercial relationships can be a source of financing for social protection initiatives in developing countries, though the sustainability and scalability of this model depends upon continued brand engagement and the eventual transition to mandatory employer contributions.

# CHAPTER TWELVE: THE WORKPLACE WELFARE FRAMEWORK: CANTEENS, CRÈCHES, HEALTHCARE, AND HOUSING

## 12.1 The Concept of Labour Welfare: Historical and Theoretical Dimensions

The concept of labour welfare encompasses a broader range of provisions than is captured by the formal legal categories of social security and workers' compensation. Labour welfare, understood in its fuller sense, includes all the measures taken by employers, the state, and workers' organizations to improve the conditions of working life beyond the minimum standards required by law: canteen facilities, crèche and childcare provision, transport arrangements, housing facilities, recreational and cultural amenities, and healthcare services. These welfare provisions address dimensions of workers' well-being that the wage contract alone cannot adequately address, and they reflect a recognition that the employment relationship encompasses more than the exchange of labor power for wages.

The historical development of employer-provided welfare services in Bangladesh, as in many industrializing countries, has been shaped by a combination of paternalistic impulses, strategic calculations about worker loyalty and productivity, social reform movements, and legal compulsion. The colonial period saw the development of company towns in the jute and textile industries of Bengal, in which employers provided housing, hospitals, schools, and other amenities as part of an integrated system of social control that was simultaneously benevolent and authoritarian. The post-independence period saw the gradual imposition of statutory welfare requirements on employers, particularly those covering canteens, first aid, and basic healthcare in large workplaces.

The theoretical analysis of labour welfare draws upon several distinct traditions. The utilitarian tradition supports labour welfare on efficiency grounds: better-fed, healthier, and less stressed workers are more productive, and employer-provided welfare services that improve worker well-being also improve worker productivity and therefore serve the employer's long-term interests. The communitarian tradition supports labour welfare on social solidarity grounds: employers and workers are members of a common social community whose mutual obligations go beyond the purely transactional relationship of the wage contract. The human rights tradition supports labour welfare as an aspect of the right to decent working conditions that is grounded in workers' inherent dignity as human beings.

## 12.2 The Legal Requirements for Workplace Welfare Under the BLA

The Bangladesh Labour Act, 2006 contains provisions on welfare facilities in Chapter VIII, which covers health, hygiene, and safety in workplaces. These provisions require employers of establishments above specified size thresholds to provide certain welfare facilities, including canteens, restrooms, first aid facilities, and basic healthcare. The specific requirements vary depending on the size of the establishment and the nature of the work.

The canteen requirement applies to establishments with more than 100 workers, requiring the employer to provide a canteen for the use of workers that meets certain minimum standards for food quality, cleanliness, and facilities. In practice, many employers provide canteens that meet

the letter of the legal requirement but fall far short of providing the nutritious and varied diet that workers need to maintain their health and productivity through long working days.

The provision of crèche facilities for workers with young children is one of the most significant and least enforced welfare requirements in the BLA. The Act requires establishments with more than 40 female workers to provide a crèche or day-care facility for the children of female workers under six years of age. This requirement reflects a recognition that women workers cannot effectively perform their employment responsibilities if they have no reliable childcare for their young children. However, the enforcement of the crèche requirement is extremely poor: most garment factories that are legally required to provide crèche facilities do not do so, and the penalties for non-compliance are too low to compel compliance.

The absence of affordable and accessible childcare is one of the most significant structural barriers to women's economic participation in Bangladesh. The provision of workplace crèches, or access to community-based childcare facilities, is essential for enabling women with young children to participate in the paid workforce without compromising their children's welfare or their own health. The reform of the crèche requirement to strengthen enforcement and to consider alternative models of childcare provision, including employer-funded community crèches that are not located in individual workplaces, should be a priority of the labour welfare reform agenda.

### 12.3 Housing and Transport: The Social Infrastructure of Labour

The housing and transport conditions of workers are among the most important determinants of their health, well-being, and productivity, but they fall outside the scope of most labour law frameworks, which focus on the conditions of the workplace itself. In Bangladesh's urban-industrial context, where millions of garment workers live in overcrowded and inadequate housing in the periphery of Dhaka and Chittagong, and where the daily commute to and from work involves long journeys on dangerous roads in overcrowded vehicles, the housing and transport dimensions of workers' welfare have urgent practical significance.

The relationship between housing and labour law is a complex one. Workers are not legally entitled to housing as a condition of their employment (except in specific circumstances where the employer operates a company town or provides accommodation as part of the employment package), and the provision of housing for workers is generally treated as a matter of the general housing market and urban planning policy rather than of labour law. However, the connection between housing conditions and occupational health is direct and well-documented: workers who live in overcrowded, poorly ventilated, and damp housing are more likely to suffer from respiratory infections, tuberculosis, and other communicable diseases that affect their capacity to work.

The BGMEA has been engaged in discussions about the development of affordable worker housing in the industrial zones around Dhaka and Chittagong, recognizing that the housing crisis facing garment workers is both a welfare problem and a business problem: workers who spend hours commuting in dangerous conditions arrive at work tired, stressed, and vulnerable to injury, and the high rates of worker turnover that result from poor housing conditions impose significant

costs on employers through training and recruitment. However, the development of affordable worker housing at scale requires substantial investment and coordination between the government, employers, international development partners, and local authorities that has not yet been achieved.

The transport issue has been directly highlighted by the EIS's extension of coverage to commuting accidents. The recognition that workers who are injured on their way to or from work should receive compensation comparable to workers injured at the workplace reflects a recognition that the risks of the daily commute are an integral part of the working life of a garment worker, and that the employer's responsibility for workers' safety extends, in a sense, to the conditions of transport to and from work. This recognition creates an argument for employer investment in safer and more reliable transport arrangements for workers, in addition to the compensation framework of the EIS.

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## CHAPTER THIRTEEN: COMPARATIVE ANALYSIS OF SOCIAL SECURITY SYSTEMS IN DEVELOPING COUNTRIES: LESSONS FOR BANGLADESH

### 13.1 The East Asian Development State and Social Protection

The experience of East Asian developmental states, particularly South Korea, Taiwan, and Thailand, is frequently cited in development policy debates as a model for developing countries seeking to combine rapid economic growth with the progressive development of social protection. The East Asian experience is relevant to Bangladesh not only because these countries faced similar starting conditions of widespread poverty and labour market informality, but also because the specific policy choices they made in the relationship between export-led industrialization and social protection development offer instructive lessons for Bangladesh's current reform agenda.

South Korea's development of a comprehensive social insurance system is particularly instructive. South Korea began its social insurance programs in the 1960s, initially covering only formal sector workers in large enterprises, and progressively extended coverage over subsequent decades as the formal sector grew and fiscal capacity increased. By the 1990s, South Korea had developed a system of four major social insurance programs: national health insurance, the national pension scheme, industrial accident compensation insurance, and employment insurance (unemployment insurance), covering the vast majority of formal sector workers.

The key lessons from the South Korean experience for Bangladesh include: the importance of beginning with the formal sector and progressively extending coverage, rather than attempting to cover all workers simultaneously; the value of mandatory participation and employer contributions in building a sustainable financing base; the critical role of administrative capacity in implementing complex social insurance systems; and the importance of political commitment sustained over decades rather than relying on the political will of any single government.

Thailand's experience with the social security system is also instructive. Thailand's Social Security Act of 1990 established a comprehensive social insurance scheme covering formal sector workers, with contributions from employers, workers, and the government. The scheme covers sickness benefit, maternity benefit, disability benefit, death benefit, child allowance, old-age pension, and unemployment insurance, providing relatively comprehensive coverage for formal sector workers. The challenge of extending coverage to the informal sector, which accounts for more than half of Thailand's workforce, remains a major policy challenge, and Thailand's experience with extending coverage through voluntary enrollment schemes similar to Bangladesh's UPS provides useful lessons about the limitations of voluntary approaches.

The comparative experience of social protection development in developing countries consistently supports several key conclusions. First, the progressive extension of coverage, beginning with high-risk sectors and formal sector workers and gradually extending to informal workers, is more feasible than attempting universal coverage immediately. Second, mandatory participation and adequate enforcement are essential for financial sustainability and equity; voluntary schemes tend to attract primarily those who are already better-off and in better health (adverse selection), undermining both financial sustainability and distributive goals. Third, institutional capacity for administration and enforcement is a critical bottleneck that must be invested in from the beginning of the system's development. Fourth, political sustainability requires visible and credible benefits that workers and their families can experience directly, creating a constituency for the system's maintenance and improvement.

### 13.2 The Social Protection Experience of Sri Lanka and India: Proximate Comparators

Sri Lanka and India, as neighboring South Asian countries that share cultural, legal, and economic characteristics with Bangladesh, offer particularly relevant comparative models for the analysis of Bangladesh's social security development.

Sri Lanka has achieved significantly higher social protection coverage than Bangladesh, despite a comparable level of economic development in the early post-independence period. Sri Lanka's Employees' Provident Fund (EPF), established in 1958, provides a comprehensive savings scheme for formal sector workers, with contributions from both employers (12 percent of wages) and workers (8 percent of wages) accumulated in individual accounts and paid out on retirement, emigration, or death. The EPF is complemented by the Employees' Trust Fund (ETF), established in 1981, which provides additional benefits including funeral expenses and assistance for education and housing. These schemes cover approximately 70 percent of formal sector workers and provide significantly better retirement income security than Bangladesh's gratuity-based system.

The Sri Lankan experience demonstrates that a middle-income developing country can develop a comprehensive social protection system for formal sector workers through a combination of mandatory contributions, professional administration, and politically sustainable benefit design. Bangladesh's current social protection framework falls significantly below the Sri Lankan standard, and the reform of the system to provide benefits comparable to those available in Sri Lanka should be a realistic medium-term goal.

India's Code on Social Security, 2020, which is in the process of implementation, represents the most ambitious recent attempt in South Asia to develop a comprehensive and universal social security framework. The Code consolidates multiple existing social security statutes and creates a framework for the extension of social security coverage to gig workers, platform workers, and informal sector workers, in addition to formal sector workers. The implementation of the Code through the E-Shram portal registration system, which aimed to register 380 million informal workers by December 2021, has faced significant implementation challenges, but the ambition and design of the system provide important lessons for Bangladesh.

The most important lesson from India's experience is the difficulty of extending social security to the informal sector without the institutional infrastructure for registering, tracking, and servicing informal workers. The E-Shram portal, while technically innovative, has struggled to achieve meaningful enrollment beyond the initial drive facilitated by administrative pressure on informal workers, and the connection between E-Shram registration and actual benefit delivery has been problematic. Bangladesh's development of equivalent digital registration infrastructure for informal workers, potentially building on the National Identity Card database and the mobile financial services ecosystem, is a prerequisite for any serious attempt to extend social protection to informal workers.

### 13.3 The World Bank's Social Insurance Perspective and Its Critique

The World Bank's approach to social protection in developing countries has evolved significantly over the past three decades, from the Washington Consensus-era skepticism of social insurance as a distortion of labour markets, to a more nuanced recognition of the importance of social protection for poverty reduction and economic development. The World Bank's Social Protection and Labor Strategy, most recently updated in 2012, identifies social protection as one of the central pillars of development policy and advocates for the progressive development of formal social insurance systems, complemented by targeted social assistance for those outside the formal labor market.

However, the World Bank's approach continues to reflect certain tensions that have attracted critical attention from scholars and advocates. The Bank's preference for means-tested social assistance over universal social insurance reflects a fiscal conservatism that critics argue sacrifices universality and solidarity for short-term savings, at the cost of long-term coverage and adequacy. The Bank's emphasis on "activation" policies that condition social protection benefits on labour market participation reflects an approach that treats paid employment as the primary mechanism of social inclusion and may be inappropriate for workers who face structural barriers to employment.

The critical analysis of World Bank social protection policy draws upon the tradition of political economy analysis associated with scholars like Bob Deacon, whose Global Social Policy (2007) argues that the World Bank has promoted a residualist model of social protection in developing countries that is inconsistent with the more comprehensive and rights-based approach advocated by the ILO and the UN human rights system. This critique has significant implications for Bangladesh, where the international institutional landscape of social protection policy includes

both the World Bank (which has been influential in the design of the NSSS) and the ILO (which has been influential in the design of the EIS and the development of ILO Convention standards).

The tension between World Bank and ILO approaches to social protection reflects a deeper tension between the market-oriented development paradigm and the rights-based development paradigm. The resolution of this tension in Bangladesh's specific context requires a politically and fiscally realistic engagement with the constraints on social protection expansion while maintaining a firm commitment to the rights-based principles of universality, adequacy, and non-discrimination that international human rights law requires.

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## CHAPTER FOURTEEN: TRANSFORMATIVE REFORM: A COMPREHENSIVE AGENDA FOR BANGLADESH'S SOCIAL SECURITY SYSTEM

### 14.1 Principles for Reform: Rights, Solidarity, and Progressivity

The reform agenda for Bangladesh's social security system should be grounded in a coherent set of principles that provide normative guidance for the many specific design choices that reform will require. These principles should reflect both the philosophical foundations of social security as a matter of justice, analyzed in Chapter One of this Part, and the practical constraints and opportunities of Bangladesh's specific political economy and institutional context.

The first principle is universality: every person who resides and works in Bangladesh should be entitled to the basic social security protections recognized in international human rights law. This principle does not require that all social security benefits be at the same level for all workers regardless of their contributions; it does require that no worker be left entirely without basic protection because of their informal employment status, their gender, their age, or their location. The universality principle implies a floor of social protection below which no one should fall, even if the level of protection above that floor is allowed to vary according to contributory history.

The second principle is solidarity: the costs of social security should be shared across all members of the working community, rather than being borne individually or only by those who happen to employ workers who experience the insured contingencies. Social solidarity in the financing of social security reflects the recognition that the risks of economic life are distributed unequally, and that a just society requires those who are better-off and those who face lower risks to contribute to the protection of those who are worse-off and face higher risks.

The third principle is adequacy: social security benefits should be sufficient to enable beneficiaries to meet their basic needs and maintain their human dignity, not merely to prevent the most extreme forms of destitution. The adequacy principle implies that benefit levels should be reviewed regularly and adjusted for inflation, and that the design of benefit structures should take into account the actual cost of living in Bangladesh rather than being set at arbitrary or politically convenient levels.

The fourth principle is progressivity: the social security system should be designed to reduce rather than exacerbate existing inequalities. This implies that the financing of social security should be progressive, with higher-income contributors paying proportionately more than lower-income contributors, and that benefit structures should provide proportionately higher replacement rates for lower-income workers.

The fifth principle is gender equality: the social security system should be designed to address rather than reproduce the gendered inequalities of the labour market. This implies special provisions for maternity protection, childcare, and the recognition of care work; equal treatment of men and women in all social security provisions; and active measures to ensure that women in informal employment are not systematically excluded from social protection.

### 14.2 The Immediate Reform Agenda: Five Priority Areas

Drawing on the analysis of the preceding chapters, five priority areas for immediate reform of Bangladesh's social security system can be identified.

The first priority is the development and enactment of a legal framework for the national Employment Injury Scheme, grounded in either an amendment to the BLA or a dedicated EIS law, that mandates participation, establishes a mandatory employer contribution system, includes penalties for non-compliance, and updates the occupational disease schedule to reflect current medical knowledge and the ILO's 2010 list of recognized occupational diseases. This should be accompanied by the development of a comprehensive medical care component of the EIS, in conformity with ILO Convention No. 121, and the development of regional EIS offices to decentralize service delivery and improve accessibility for workers outside the main urban centers.

The second priority is the comprehensive reform of the Universal Pension Scheme to address its current design deficiencies and enrollment failures. This should include: the introduction of a basic non-contributory pension for all citizens above pension age, financed from general revenues, as the foundation of the old-age security system; the redesign of the contributory UPS to make it financially competitive with alternative savings instruments by increasing the interest rate applied to contributions and introducing flexibility features including partial withdrawal and lump-sum options; the development of a meaningful subsidy for low-income contributors that reaches the workers who are most in need of pension protection; and the development of gender-sensitive provisions that recognize women's distinctive labour market experiences.

The third priority is the development of a socialized maternity benefit scheme, financed through a social insurance mechanism rather than by individual employers, to eliminate the financial incentive for discrimination against women of childbearing age. This should be accompanied by the introduction of a statutory paternity leave entitlement, the strengthening of the enforcement of the crèche requirement, and the development of government-subsidized community childcare facilities in the industrial zones around Bangladesh's major cities.

The fourth priority is the development of a systematic framework for extending social protection to informal sector workers. This should begin with the development of a digital registration

system for informal workers, building on the National Identity Card database, and the introduction of simplified contribution mechanisms for informal workers through mobile financial services. The Samata UPS pillar should be reformed to make it genuinely accessible to the poorest workers, potentially through the introduction of a fully subsidized pension for workers below a specified income threshold. The EIS should be progressively extended to informal sector workers, beginning with the highest-risk sectors such as construction and the brick kiln industry.

The fifth priority is the reform of the WPPF framework to address the problem of profit concealment and improve the effectiveness of distribution. This should include the strengthening of audit and enforcement mechanisms for WPPF compliance, the revision of the contribution base to reduce the scope for profit manipulation, the development of a transparent reporting and monitoring framework for WPPF contributions and distributions, and the exploration of worker ownership models as a complement to or replacement for the current cash distribution approach.

### 14.3 The Medium-Term Transformative Agenda

Beyond the immediate reform priorities, the medium-term transformation of Bangladesh's social security system requires a sustained effort of institution-building, fiscal reform, and political mobilization. The development of a genuinely comprehensive social security system, covering all workers against all major social risks at adequate benefit levels, is a generational project that cannot be accomplished within a single legislative term or a single government's mandate.

The fiscal foundation for this transformation requires a significant improvement in Bangladesh's tax-to-GDP ratio, which at 8-9 percent is inadequate for financing the social protection system that the country's development aspirations and international obligations require. The reform of the tax system to improve compliance, reduce evasion, and ensure that the burden of taxation falls fairly across all income groups is a prerequisite for any serious expansion of social protection. The political mobilization for tax reform requires the development of a social compact in which the improved provision of public services, including social protection, education, and healthcare, creates sufficient public support for increased taxation to overcome the organized resistance of the business community.

The institutional development needed to administer a comprehensive social security system also requires sustained investment over many years. The National Pension Authority, the EIS Programme Support Unit, DIFE, and the various agencies responsible for administering social assistance programs all need significant capacity strengthening in terms of staffing, training, information technology, and governance. The integration of the various social protection databases, including the EIS database, the G2P social protection registry, the NPA pension database, and the DIFE factory database, into a unified and interoperable information system would significantly improve the efficiency and effectiveness of the overall social protection system.

The role of civil society, trade unions, and workers' organizations in sustaining the reform momentum over time is crucial. Social protection reform in countries that have achieved comprehensive systems has typically been driven by a combination of political mobilization by

organized workers and their allies, the intellectual contribution of researchers and advocates who generate the evidence and arguments for reform, and the international pressure of treaty obligations and trade conditionality. In Bangladesh, the development of a genuine social protection reform movement requires the strengthening of all three of these drivers.

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## CHAPTER FIFTEEN: PHILOSOPHICAL SYNTHESIS AND CONCLUDING ANALYSIS

### 15.1 The Moral Architecture of Social Security Reform

The analysis developed across the fourteen preceding chapters of Part Fifteen reveals a moral landscape of extraordinary urgency and complexity. At the centre of this landscape are millions of working people whose lives are shaped by a daily calculus of physical risk, economic insecurity, and social vulnerability that the formal legal system has, until now, addressed only partially and inadequately. The garment worker who spends her days hunched over a sewing machine in a factory that may or may not meet minimum safety standards, whose wage is set by a minimum wage board whose recommendations she has no effective voice in, who has no pension, no unemployment insurance, no occupational disease coverage, and no maternity benefit that her employer cannot evade: this worker's situation is not merely a policy problem. It is a moral scandal that implicates the entire social order that allows it to persist.

The philosophical analysis of social security reform in Bangladesh must therefore begin with a moral reckoning: with the recognition that the conditions in which millions of Bangladeshi workers live and work represent a fundamental failure of justice, and that the legal and institutional reforms analyzed in this Part are not merely technical improvements to an administrative system but are constitutive elements of a moral transformation of the society's relationship with its working people.

The republican tradition's emphasis on non-domination provides the sharpest formulation of what is morally at stake. A worker without social security is not merely a worker with a lower income; she is a worker who is structurally vulnerable to the arbitrary power of her employer and to the vagaries of economic fortune in a way that fundamentally compromises her status as a free and equal citizen. The absence of unemployment insurance means that she cannot afford to leave an employment relationship in which her rights are being violated, because the alternative is destitution. The absence of occupational injury compensation means that an injury at work not only causes physical suffering but destroys the economic foundation of her family's life. The absence of a pension means that she faces old age in poverty, dependent on the charity of her family or the meager resources of the government's social assistance program. In all of these ways, the absence of social security is a condition of domination, and the development of a comprehensive social security system is, on the republican account, a condition of genuine freedom.

The capabilities approach adds a further dimension to this moral analysis. The absence of social security does not merely leave workers vulnerable to domination; it directly impairs the

development and exercise of the human capabilities that constitute a genuinely human life. The garment worker who spends her working life in daily fear of injury, illness, or dismissal, and who cannot plan for the future because the future is entirely uncertain, is a person whose capability for practical reason, for affiliation with others, and for the control of her material and social environment has been systematically stunted by the conditions of her working life. The development of social security is, on the capabilities account, not merely a matter of providing a safety net against the worst outcomes but of creating the conditions under which workers can develop and exercise the full range of human capabilities.

## 15.2 The Political Economy of Reform: Opportunities and Constraints

The political economy of social security reform in Bangladesh is shaped by a complex constellation of forces that both enable and constrain the reform agenda developed in the preceding chapters. Understanding these forces is essential to developing a realistic reform strategy that can achieve genuine and sustainable progress.

The most significant enabling factor is the political window created by the July 2024 revolution and the establishment of the interim government of Muhammad Yunus. The democratic legitimacy crisis that triggered the revolution created an unusual moment of political openness in which reforms that had been blocked by entrenched interests became politically possible. The Labour Reform Commission's report, the 2025 amendment to the BLA, and the expanded implementation of the EIS all reflect the opportunities created by this political moment. The challenge is to sustain the reform momentum through what is inevitably a period of political uncertainty as Bangladesh navigates the transition back to democratic governance.

The international accountability framework, including the ILO Roadmap, the EU GSP+ framework, and the engagement of international brands through the EIS and the International Accord, provides an important external pressure for continued reform. The brands' commercial interest in the social protection and safety conditions of their supply chains is a powerful driver of reform that operates independently of the domestic political cycle. The ILO's technical assistance and normative engagement provides both the intellectual resources for reform design and the accountability framework that maintains pressure for implementation.

The principal constraining factor is the organized resistance of the employer community, particularly the garment industry lobby represented by the BGMEA. This resistance is grounded in a genuine if often overstated concern about the competitive implications of increased social protection costs, and it is exercised through political connections, media influence, and the threat of investment relocation. The reform strategy must engage with these concerns rather than dismissing them, providing credible evidence on the costs and benefits of social protection and developing transition arrangements that give employers time to adjust.

## 15.3 Law, Social Security, and the Transformation of the Social Contract

The analysis of Part Fifteen ultimately points toward a vision of Bangladesh's social contract that is more inclusive, more just, and more genuinely reciprocal than the one that has prevailed for most of the country's post-independence history. The existing social contract, in which workers

provide cheap labour for export industries in exchange for wages that are set at the minimum necessary to prevent revolt, in which the state provides basic order and infrastructure in exchange for tax revenues that are far below their potential, and in which employers extract profits while bearing minimal responsibility for the social costs of their production activities, is not a just social contract. It is a relationship of structural exploitation that has been permitted to persist by the weakness of workers' collective organization, the failures of the state's regulatory apparatus, and the complicity of international buyers who have benefited from cheap production without taking adequate responsibility for the conditions under which it is produced.

The transformation of this social contract requires not merely legislative reform but a shift in the fundamental understanding of the obligations that economic participation in Bangladesh entails. Employers who benefit from workers' productive activity should bear meaningful responsibility for the social costs of that activity, including the costs of occupational injury, the costs of old age, and the costs of other social risks associated with employment. Workers who contribute to national prosperity through their labour should be entitled to a meaningful share of the security and dignity that prosperity can provide. And the state, which derives both its legitimacy and its fiscal resources from the productivity of the Bangladeshi economy, should invest in the social infrastructure that makes sustainable economic development possible, including the social security system that protects workers against the risks of economic life.

The legal reforms analyzed in Part Fifteen, from the development of the national EIS to the reform of the UPS, from the extension of social protection to domestic and informal workers to the strengthening of the WPPF and the development of socialized maternity benefits, are the institutional expressions of this vision of a transformed social contract. They are not, in themselves, sufficient to achieve the transformation; they require the political will, the administrative capacity, the fiscal resources, and the organized social power that can only be developed through sustained collective effort over many years. But they provide the legal framework within which this collective effort can bear fruit.

The international human rights framework, which Bangladesh has formally embraced through its ratification of the ICESCR and multiple ILO conventions, provides both the normative foundation and the accountability mechanism for this transformation. The right to social security, recognized in Article 9 of the ICESCR and elaborated in the ILO's comprehensive framework of social security standards, is not an aspirational goal that can be deferred indefinitely to a future moment of sufficient prosperity. It is an obligation that Bangladesh has undertaken, and that its workers, as holders of this right, are entitled to demand be fulfilled.

The most fundamental insight of the philosophical analysis is that social security is not a gift from the state to workers, or a concession from employers to the workforce, or a charitable provision that depends upon the continued benevolence of international brands. It is a right, grounded in the equal worth and dignity of all human beings, and its realization is a requirement of justice that admits of no indefinite deferral. The progress made in the development of Bangladesh's social security system, from the EIS pilot to the UPS to the 2025 amendment's extension of social protection to domestic workers and platform workers, is genuine and should be acknowledged. But it is progress from a starting point of severe inadequacy, and it falls far

short of what justice requires for the 90 million working people whose lives are shaped by the adequacy or inadequacy of Bangladesh's social protection framework.

The next Part of this textbook, Part Sixteen, will address the law of labour migration and the protection of migrant workers, building upon the analysis of social security in this Part to provide a comprehensive examination of the legal framework governing the approximately 13 million Bangladeshi workers who are employed abroad, and of the social protection challenges posed by transnational labour mobility in a world of uneven economic development and imperfect legal protection for migrant workers' rights.

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## BIBLIOGRAPHICAL NOTE AND FURTHER READING FOR PART FIFTEEN

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End of Part Fifteen

Part Sixteen, the final Part of this textbook, will examine the law of labour migration and the protection of Bangladeshi migrant workers abroad, analyzing the legal framework governing overseas employment, the social protection challenges posed by transnational labour mobility, the bilateral and multilateral instruments that govern migrant workers' rights, the role of remittances in Bangladesh's political economy, and the reform agenda for improving the protection of the approximately 13 million Bangladeshi workers who are employed in countries around the world, from the Gulf States and Malaysia to Italy and the United Kingdom.

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*The Labour Law of Bangladesh: Commentaries and Necessary Reforms* is published in sixteen parts. Part Fifteen examines social security, occupational injury compensation, and workers' welfare. Readers are encouraged to engage critically with the arguments and analyses presented and to consult the primary sources cited in the bibliographical note. The field of labour law and social security is one in which law and lived reality interact in complex and often painful ways, and the test of any textbook in this field is ultimately whether it helps its readers understand and improve that reality for the working people whose lives it addresses.

## PART SIXTEEN: LABOUR MIGRATION, REMITTANCES, AND THE LEGAL PROTECTION OF BANGLADESHI MIGRANT WORKERS ABROAD

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### EDITORIAL NOTE ON PART SIXTEEN

This sixteenth and final Part of the textbook addresses the law of labour migration and the protection of Bangladeshi workers employed outside the territorial jurisdiction of Bangladesh. It

is a subject of enormous importance for Bangladesh as a nation, for Bangladesh's working people as individuals and families, and for the development of international labour law as a field of normative inquiry. The approximately thirteen million Bangladeshi workers currently employed abroad constitute one of the largest diaspora labour forces in the developing world. Their remittances, amounting to approximately twenty-two billion United States dollars annually, constitute Bangladesh's single most important source of foreign exchange earnings and a critical pillar of national development. Their suffering, their exploitation, their premature deaths, their fraudulent recruitment, their separation from families, their exposure to violence and abuse, and the systematic failure of both Bangladeshi and host-country legal systems to protect their rights, constitute one of the most urgent human rights crises in the country's history.

This Part examines the legal architecture that governs the migration of Bangladeshi workers, the institutions responsible for its administration and enforcement, the philosophical and jurisprudential foundations of migrant workers' rights claims, and the reform agenda that is necessary to bring Bangladesh's migration governance into conformity with international human rights standards and the requirements of justice for the men and women who risk everything to seek a livelihood abroad.

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## CHAPTER ONE: LABOUR MIGRATION AS A JURISPRUDENTIAL AND PHILOSOPHICAL CATEGORY

### 1.1 The Migrant Worker as a Legal Subject: Boundaries, Identity, and Rights

The migrant worker occupies one of the most juridically complex and normatively contested positions in the architecture of modern law. Unlike the domestic worker, whose legal status is governed by the law of a single state and whose rights claims are addressed to a single sovereign, the migrant worker is simultaneously subject to the legal jurisdiction of at least two states: the state of origin, which claims the worker as a citizen and bears certain obligations toward the worker arising from nationality and human rights law, and the state of employment, which claims jurisdiction over the worker's activities and living conditions during the period of migration and whose legal framework determines the practical conditions of the worker's working life.

This dual subjection creates a profound asymmetry of rights and vulnerabilities. In the state of origin, the migrant worker is a full citizen, entitled in principle to the protections of the constitutional order and the domestic labour law framework examined in the preceding fifteen Parts of this textbook. But in the state of employment, the migrant worker is typically not a citizen, not a permanent resident, and often not even a person with the right to remain in the country if the employment relationship is terminated. The migrant worker's legal status in the receiving state is derivative of the employment relationship; if the relationship ends, for whatever reason, the worker's right to remain in the country typically ends with it. This structural dependency of residence status upon employment status is the single most important feature of the legal position of migrant workers in most of the world's major labour-receiving states, and it is the root cause of many of the most serious rights violations that migrant workers suffer.

The philosopher Joseph Carens, in his influential work on the ethics of immigration, has argued that the territorial boundaries of states, and the legal regimes that enforce those boundaries, are deeply unjust from a cosmopolitan perspective, because they condemn people to life circumstances determined entirely by the accident of their birthplace. A person born in Bangladesh faces dramatically different life prospects from a person born in the United States or Germany, not because of any difference in their intrinsic worth, their capacities, or their moral desert, but simply because of the territory in which they happen to have been born. On Carens's account, the global system of territorial exclusion that prevents workers from moving freely to wherever their labour is in demand and their prospects are best is a system that perpetuates global inequality and violates the basic principle that all human beings are of equal worth.

This cosmopolitan perspective has important implications for the legal analysis of labour migration. If we accept the premise that migrant workers are, as human beings, of equal worth and dignity to the citizens of the countries in which they work, then it follows that the law should treat them with equal respect and equal protection, regardless of their national origin or immigration status. The systematic legal exclusion of migrant workers from the protections of domestic labour law, or the creation of legal regimes that treat migrant workers as less than fully equal subjects of legal protection, is, on this account, a form of injustice that demands legal and political remedy.

The republican political philosophy of Philip Pettit provides a complementary analytical framework. For republicans, the fundamental wrong of the migrant worker's situation is not primarily economic exploitation, though that is certainly present, but domination: the condition of being subject to the arbitrary will of another without the legal or practical capacity to resist. The migrant worker whose residence status depends upon the continued goodwill of a single employer is, quintessentially, a dominated person in the republican sense. The employer can threaten dismissal, and therefore loss of immigration status, deportation, and separation from family, as a sanction against any worker who complains about working conditions, demands the wages they are owed, or seeks to assert their legal rights. This structural vulnerability to employer power is the defining feature of the migrant worker's situation and the primary justification for the legal reforms that are the subject of this Part.

The feminist analysis of labour migration theory, developed by scholars such as Rhacel Parrenas, Nicola Piper, and Robyn Rodriguez, adds a further dimension. Migration is a deeply gendered phenomenon, and the gendered dimensions of migration law and governance have been systematically undertheorized in mainstream legal scholarship. Women who migrate for domestic work, caregiving, or entertainment face distinctive vulnerabilities that arise from the intersection of their status as migrants and their status as women in societies that may have profoundly unequal gender norms. The law's response to these gendered vulnerabilities has been inadequate, reflecting both the broader failure of labour law to theorize care work and domestic work as legitimate forms of labour deserving full legal protection, and the specific failure of migration law to recognize the particular situation of women migrants in highly feminized and largely informal sectors of the labour market.

The postcolonial theory of labour migration, associated with scholars such as Robbie Shilliam and Nandita Sharma, offers a further critical perspective that is particularly relevant to the

Bangladeshi case. The global system of labour migration, in which workers from poor countries in the Global South migrate to provide cheap labour for rich countries in the Global North or the Gulf states, is not a neutral market phenomenon but is a product of the colonial and imperial history that created the global economic hierarchy in which some countries are rich and others are poor. The Bangladesh from which workers emigrate is not simply a poor country; it is a country whose poverty is, in significant part, a product of the colonial extraction and the postcolonial economic structures analyzed in Part One of this textbook. The analysis of labour migration in Bangladesh therefore requires attention to the global political economy of migration and its historical foundations, not merely to the domestic legal framework.

### 1.2 The International Law Framework for Migrant Workers' Rights

The international legal framework for the protection of migrant workers is extensive but fragmented, reflecting the diverse sources and divergent interests that have shaped its development. The primary international instruments can be organized under three overlapping heads: general international human rights law, international labour law, and international migration law.

The general international human rights framework, as established in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966), applies in principle to all persons regardless of their nationality or immigration status. Article 2 of both Covenants requires states to ensure the covenant rights to all individuals within their territory and subject to their jurisdiction, without discrimination on grounds including national origin. This universality principle is of fundamental importance for migrant workers, because it implies that the host state has legal obligations toward migrant workers that cannot be discharged simply by treating them as less-than-full subjects of legal protection.

In practice, however, the application of the international human rights framework to migrant workers has been contested and uneven. Host states have frequently invoked national sovereignty and immigration control powers as justifications for treating migrant workers less favorably than citizens, and the international human rights treaty bodies have not always been effective in challenging these justifications. The UN Committee on Economic, Social and Cultural Rights (CESCR) has in its General Comments attempted to articulate the obligations of states toward migrant workers under the ICESCR, but the implementation of these commitments by states parties has been inconsistent.

The primary dedicated international instrument for the protection of migrant workers is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN General Assembly in 1990 and entering into force in 2003 (ICMW). Bangladesh was among the early signatories to this Convention, which it ratified in 2011, and the Convention's obligations are directly relevant to the legal analysis of Bangladesh's migration governance framework.

The ICMW provides the most comprehensive international legal framework for the protection of migrant workers, establishing a wide range of rights for both documented and undocumented

migrant workers, including the right to equality with nationals in respect of working conditions and social security, the right to information, the right to legal protection in both the sending and receiving states, protections against collective expulsion, and guarantees of family unity. However, the ICMW suffers from a profound weakness that severely limits its practical effectiveness: it has been ratified almost exclusively by labour-sending countries, and not a single major labour-receiving country (including Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, Malaysia, and the Gulf states that are major destination countries for Bangladeshi workers) has ratified it. The Convention thus lacks the bilateral structure of mutual obligation that would be necessary to make it an effective instrument of protection.

The ILO has developed a series of conventions specifically addressing migrant workers. The Migration for Employment Convention (Revised), 1949 (Convention No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (Convention No. 143), together constitute the principal ILO framework for migrant workers' rights, establishing standards on recruitment, conditions of work, equality of treatment, and protection against abusive migration practices. Bangladesh has ratified Convention No. 143, though the extent of its implementation has been limited. The ILO Domestic Workers Convention, 2011 (Convention No. 189), is particularly relevant to the large number of Bangladeshi women who migrate for domestic work in the Gulf states, but as noted below, it has been poorly ratified among destination countries.

The ILO's Multilateral Framework on Labour Migration, adopted in 2006, is a non-binding but influential framework that establishes principles and guidelines for a rights-based approach to labour migration, covering recruitment, conditions of work, social protection, and return. The Framework is particularly important as a normative reference for the bilateral labour agreements between Bangladesh and destination countries, which are the primary practical instruments through which Bangladesh seeks to protect the rights of its migrant workers.

The UN Global Compact for Safe, Orderly and Regular Migration, adopted in Marrakesh in 2018, represents the most recent significant development in the international framework for migration governance. The Compact is a non-binding political agreement that establishes a comprehensive set of objectives and commitments for the governance of international migration, including commitments on the protection of migrant workers' rights, the reduction of migration costs, the regularization of status for migrants in irregular situations, and the facilitation of remittance transfers. Bangladesh participated actively in the negotiation of the Global Compact and is committed to its implementation. The International Migration Review Forum, which is the primary intergovernmental forum for reviewing progress on Global Compact implementation, held its most recent meeting in 2024, and Bangladesh's national report provided an assessment of its progress toward the Compact's objectives.

### 1.3 Theories of Justice and the Claims of Migrant Workers

The political philosophy of migration has been one of the most productive areas of political theory over the past two decades, generating important debates about the obligations of states toward migrant workers and the principles of justice that should govern the regulation of labour mobility. Several theoretical frameworks are of direct relevance to the analysis of Bangladesh's migration governance.

John Rawls's A Theory of Justice, and its extension in The Law of Peoples, is the starting point for much contemporary philosophical debate about global justice and migration. In A Theory of Justice, Rawls's principles of justice, including the difference principle, which requires that social and economic inequalities be arranged to benefit the least advantaged members of society, are articulated for the domestic society of a single nation-state, and Rawls explicitly declines to extend them to the global level. In The Law of Peoples, Rawls develops a theory of international justice that, critics argue, gives insufficient weight to the claims of the global poor and fails to address the structural inequalities of the international economic order that drive labour migration.

Thomas Pogge's critique of Rawls's international theory, and his broader argument that rich countries bear positive obligations to the global poor arising from their complicity in maintaining the unjust global institutional order, has significant implications for the analysis of labour migration. Pogge argues that the poverty that drives Bangladeshi workers to accept exploitative conditions abroad is not a natural fact but a product of global economic structures that rich countries have designed and maintained in ways that systematically disadvantage the poor. On this account, the exploitation of Bangladeshi migrant workers is not merely a bilateral problem between Bangladesh and the destination countries; it is a problem that implicates the entire global economic order and the responsibilities of all states and all actors within it.

The capabilities approach of Amartya Sen and Martha Nussbaum offers a richer framework for the evaluation of migrant workers' claims. On the capabilities account, what matters is not simply whether migrant workers receive fair wages but whether they have the opportunity to develop and exercise the full range of human capabilities that constitute a genuinely human life. Migration motivated by destitution, or migration that occurs under conditions that systematically impair the migrant's capabilities for bodily health, bodily integrity, play, affiliation with others, and control over one's political and material environment, represents a failure of the global capability order that demands redress. The capabilities framework thus supports not only the protection of migrant workers' labour rights but the development of conditions in origin countries that make genuine choice about migration possible, rather than migration driven by the absence of any viable alternative.

The communitarian critique of cosmopolitan theories of migration, associated with scholars such as Michael Walzer and David Miller, argues that states have legitimate interests in controlling the composition of their political communities and that obligations of justice are primarily domestic rather than global. On this account, migrant workers' rights claims must be balanced against the legitimate interests of destination-country citizens in controlling immigration and maintaining the social and cultural character of their communities. This communitarian perspective has been influential in the politics of immigration restriction in many countries, but it has been extensively criticized by cosmopolitan philosophers who argue that it rests on morally arbitrary distinctions of birth and national origin.

The practical resolution of these philosophical debates in the context of Bangladesh's migration governance requires a framework that takes seriously both the rights of migrant workers as human beings of equal worth and the practical constraints of the political system in which those rights must be realized. This textbook does not adopt the position that borders should be open or that all restrictions on labour mobility are unjust; it does adopt the position that within whatever

system of regulated migration exists, migrant workers must be treated as full human beings deserving equal respect, equal legal protection, and equal access to justice, and that the systematic failure of existing governance frameworks to provide this treatment is both a legal violation and a moral scandal.

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## CHAPTER TWO: THE HISTORICAL AND POLITICAL ECONOMY OF BANGLADESHI LABOUR MIGRATION

### 2.1 The Historical Roots of Bangladeshi Labour Migration

The migration of workers from what is now Bangladesh to distant places of employment has deep historical roots that predate the emergence of the modern international migration system. During the colonial period, Bengali workers were recruited or coerced to labor in tea plantations in Assam, rubber plantations in Malaya, and sugar plantations in Fiji and the Caribbean under the indentured labour system, which was a form of legally sanctioned servitude that replaced chattel slavery in the British Empire following abolition. The indentured system transported hundreds of thousands of South Asian workers, including many from Bengal, to colonial possessions around the world under contracts that bound them to a particular employer for a specified period, typically five years, and that subjected them to criminal penalties for breach of contract.

The indentured labour system has been analyzed by historians and legal scholars as a form of semi-slavery, and its relevance to the analysis of contemporary Bangladeshi labour migration is more than merely historical. The structural features of the indentured system, including the recruitment by private agents, the upfront payment of migration costs creating a debt relationship, the tying of the worker's legal status to a particular employer, the subjection to criminal penalties for labour contract breach, and the isolation of workers in remote or enclosed workplaces where they are entirely dependent upon the employer for the basic conditions of survival, are reproduced in strikingly similar forms in contemporary migration governance, particularly in the kafala system of the Gulf states analyzed in Chapter Four below.

The colonial period also saw the beginnings of Bangladeshi maritime migration, with Bengali lascars (sailors) forming a significant component of the crews of British merchant shipping from at least the seventeenth century. The lascar migration established a pattern of chain migration to port cities in Britain and elsewhere, laying the foundations for the Bangladeshi diaspora communities in the United Kingdom that became significant in the post-war period. The legal status of lascars was distinctive, governed by the Merchant Shipping Acts rather than the general labour law, and characterized by employment contracts of a highly exploitative character that discriminated against Asian seamen relative to British seamen in terms of wages, conditions, and legal protections.

The contemporary system of mass Bangladeshi labour migration to the Middle East began in the 1970s, following the oil price shocks of 1973 and 1979 that generated enormous oil revenues for the Gulf states and created a massive demand for construction and service workers to build and maintain the infrastructure of rapidly modernizing economies. The Gulf states, with small

indigenous populations, could not meet this labour demand from their own citizens and turned to South and Southeast Asia as sources of cheap, controllable, and temporary labour. Bangladesh, in its early years of independence, was a desperately poor country with a large and rapidly growing labour force, and its newly established government saw labour export as a mechanism for earning foreign exchange and managing the problem of unemployment.

The first formal bilateral agreement between Bangladesh and a Gulf state for the supply of migrant workers was concluded with Saudi Arabia in 1976, during the government of General Ziaur Rahman. This agreement, and the subsequent agreements with Kuwait, UAE, Qatar, Bahrain, Oman, and other destination countries, established the basic framework of a state-managed but commercially operated migration industry in which government agencies and private recruitment agents collaborated in the business of supplying Bangladeshi workers to Gulf employers.

The migration industry grew rapidly through the 1980s and 1990s, surviving significant disruptions including the mass repatriation of Bangladeshi workers from Kuwait following the Iraqi invasion of 1990, and expanding to new destinations including Malaysia, Singapore, South Korea, and, more recently, European countries. The number of Bangladeshi workers abroad has grown from a few hundred thousand in the late 1970s to approximately thirteen million as of 2024-2025, making Bangladesh one of the world's largest labour-exporting countries in absolute terms.

### 2.2 The Political Economy of Labour Migration: State, Capital, and Worker

The political economy of Bangladeshi labour migration is shaped by the interaction of three sets of actors with distinct and frequently conflicting interests: the Bangladeshi state, the migration industry (including recruitment agents, financing agencies, and intermediaries), and the migrant workers themselves.

The Bangladeshi state's relationship to labour migration is complex and ambivalent. On one hand, the state has a strong institutional interest in the continuation and expansion of labour migration, because remittances represent a major source of foreign exchange earnings, reduce unemployment pressure in the domestic labour market, and provide political support for governments that are seen as facilitating workers' access to overseas employment. On the other hand, the state bears certain obligations to its citizens who migrate, arising from international human rights law, the constitutional rights of Bangladeshi citizens, and the basic normative requirements of sovereign responsibility for the welfare of nationals abroad. The tension between these two sets of interests has consistently been resolved in favor of the promotion of migration flows at the expense of the robust protection of migrant workers' rights.

The migration industry constitutes a powerful lobby against the strong regulation of recruitment practices. Private recruitment agencies earn their income from fees charged to workers for securing overseas placement, a practice that creates a systematic incentive to maximize recruitment and minimize costs, frequently at the expense of the quality of the employment opportunities secured and the adequacy of the information and support provided to workers before and during their migration. The recruitment industry is fragmented among thousands of

small and medium-sized agencies, many of which operate at the margins of legal compliance, and effective regulation of this industry has been a persistent challenge for Bangladesh's migration governance.

Migrant workers, by definition, are persons who have left Bangladesh and are therefore not present in the domestic political arena to advocate for their interests. Their political representation is largely indirect, through families, diaspora organizations, and advocacy groups such as Ovibashi Karmi Unnayan Program (OKUP), and their collective bargaining power is extremely limited, since they typically work as individuals in diverse occupations and locations spread across dozens of destination countries. The structural power imbalance between workers and the migration industry, and between workers and destination-country employers, reflects and reproduces the broader power dynamics of the global labour market analyzed in Part One of this textbook.

The remittance economy creates a particular political dynamic in Bangladesh. The billions of dollars sent home by migrant workers each year constitute a direct transfer of resources to households across the country, and the families of migrants form a substantial and politically significant constituency. Governments that are seen as restricting access to overseas employment, or as failing to protect migrant workers, face political costs from this constituency. Conversely, governments that successfully open new labour markets or increase the volume of remittances receive political credit that creates incentives for the promotion of migration flows regardless of the conditions under which migration occurs. This political dynamic helps explain why Bangladesh has consistently prioritized the volume of migration over the quality of migration in its governance approach.

### 2.3 Migration Destinations and Sectoral Patterns

Bangladesh's migrant workers are employed in a wide range of destination countries and across a diverse range of occupational sectors. The principal destination countries, measured by the current stock of Bangladeshi migrants, are Saudi Arabia (estimated 2.5 million), the United Arab Emirates (estimated 1.5 million), Kuwait, Qatar, Oman, Bahrain, Malaysia, Singapore, South Korea, Italy, and the United Kingdom. The Gulf states as a whole account for approximately 70 percent of the total stock of Bangladeshi migrant workers.

In the Gulf states, Bangladeshi workers are concentrated in the construction and infrastructure sector, the domestic service sector, retail and hospitality, cleaning and maintenance services, and, to a lesser extent, professional and technical occupations. The construction sector employs the largest number of Bangladeshi workers and is characterized by physically arduous conditions, high rates of occupational injury and death, long working hours, irregular payment of wages, and significant problems with debt bondage arising from the migration cost structure analyzed in Chapter Five below.

In Malaysia, Bangladeshi workers are concentrated in manufacturing, construction, and plantation agriculture, and the Malaysian migration corridor has historically been plagued by serious governance failures including excessive recruitment fees, widespread undocumented migration, and significant problems with forced labour and human trafficking. The ILO has

found indicators of forced labour in the Malaysian electronics and palm oil sectors that employ significant numbers of Bangladeshi workers, and Bangladesh has periodically suspended the deployment of workers to Malaysia following particularly egregious governance failures.

The feminization of Bangladeshi labour migration, while less advanced than in Philippines or Indonesia, has been a significant trend. Women workers constitute an increasing share of Bangladeshi migrant workers, primarily employed as domestic workers in the Gulf states, particularly Jordan, Lebanon, Saudi Arabia, and Kuwait. Female domestic workers face particularly severe vulnerabilities arising from the intersection of their status as migrants, their employment in private homes outside the reach of labour inspection, and the gendered power dynamics of their relationship with employers that frequently include physical and sexual abuse.

### 2.4 Remittances and Development: The Macroeconomic Dimension

The macroeconomic significance of remittances to Bangladesh's development cannot be overstated. Remittances have consistently been the largest single source of foreign exchange earnings for Bangladesh, exceeding the export earnings of the ready-made garments sector in some years and constituting approximately six to seven percent of GDP. The Bangladesh Bank's data for fiscal year 2023-24 recorded formal remittance inflows of approximately $23.9 billion, with informal channels (hundi) estimated to add further billions to the total transfer of funds.

The development literature on remittances presents a complex and contested picture of their economic effects. At the household level, the evidence consistently shows that remittances are strongly associated with improvements in consumption, investment in education and health, and reduction of poverty. Households receiving remittances have higher incomes, better nutrition, higher rates of school enrollment for children, and greater access to healthcare. The multiplier effects of remittance spending in local economies create benefits that extend beyond the immediate recipients to local traders, service providers, and wage earners.

However, the development literature also identifies significant limitations to the developmental impact of remittances. Remittances are private transfers that primarily finance household consumption rather than productive investment; only a small proportion of remittance flows is channeled into enterprises, infrastructure, or other productive uses that create sustained economic development beyond the household level. The dependence of the Bangladeshi economy on remittances creates structural vulnerabilities to global economic fluctuations, political instability in destination countries, and policy changes by destination-country governments. The COVID-19 pandemic demonstrated these vulnerabilities acutely, as the mass repatriation of workers from the Gulf and Malaysia in 2020 precipitated a sharp decline in remittance inflows and a severe economic shock for hundreds of thousands of migrant households.

The relationship between remittances and migration costs is a critical dimension of the development analysis. When workers pay excessive migration costs, as they routinely do in Bangladesh, a significant proportion of the first year or more of remittance earnings is consumed in repaying the debt incurred to finance migration. The net development benefit of migration is therefore much smaller than the gross remittance figures suggest, and the distribution of the

gains from migration is systematically skewed away from workers and their families and toward recruitment agents, intermediaries, and others who profit from the migration industry.

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## CHAPTER THREE: THE DOMESTIC LEGAL FRAMEWORK FOR MIGRATION GOVERNANCE

### 3.1 From Colonial Ordinance to Modern Statute: The Legislative Evolution

The regulation of overseas employment by Bangladesh has evolved through three broad legislative phases. The colonial phase, during which the Emigration Act, 1922, and the Passport Entry into India Act, 1920, provided the basic framework for regulating the departure of workers from British India, established the state's authority to control emigration and to regulate the activities of private recruitment agents. This colonial framework was primarily designed to facilitate the supply of indentured and contracted labour to colonial enterprises rather than to protect the rights of workers, and its orientation toward control rather than protection set a template that influenced subsequent legislative developments.

The Pakistani period saw the continuation of the colonial framework with modifications, and the early independence period of Bangladesh was characterized by legislative inaction in the field of migration governance, reflecting the more immediate priorities of state-building and economic reconstruction. The Emigration Ordinance, 1982, promulgated during the period of General Ershad's military government, provided a more developed regulatory framework for overseas employment, establishing requirements for the licensing of private recruitment agencies, the approval of overseas employment contracts by the government, and the prohibition of certain abusive practices. However, the Ordinance was primarily oriented toward facilitating and regulating the volume of migration rather than toward robust protection of workers' rights, and its enforcement was consistently weak.

The Overseas Employment and Migrants Act, 2013 (OEMA 2013), which replaced the Emigration Ordinance, represents the most significant legislative development in Bangladesh's migration governance history. The Act was enacted in response to the government's ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families, 1990, and reflects an attempt to bring Bangladesh's domestic legislation into conformity with its international obligations. The OEMA 2013 is accompanied by the Overseas Employment and Migrants Rules, 2017, which provide more detailed regulatory provisions for the implementation of the Act.

### 3.2 The Architecture of the Overseas Employment and Migrants Act, 2013

The OEMA 2013 is organized in nine chapters covering the principal elements of the migration governance framework. Chapter I provides definitions and preliminary matters, establishing the scope of the Act. Chapter II deals with the Ministry of Expatriates' Welfare and Overseas Employment (MEWOE), which is the primary government body responsible for migration governance. Chapter III establishes the framework for the licensing and regulation of private

recruitment agencies, which are the principal commercial actors in the migration industry. Chapter IV deals with the recruitment process, including requirements for employment contracts, medical examination, pre-departure orientation training, and the Smart Card system for migrant registration. Chapter V establishes the Wage Earners' Welfare Board and its fund for the welfare of migrant workers. Chapter VI deals with the Labour Welfare Wings to be established in Bangladeshi missions in destination countries. Chapter VII contains provisions on the rights and welfare of migrant workers. Chapter VIII deals with offences and penalties. Chapter IX contains miscellaneous provisions.

The Act's most significant provisions in terms of worker protection are those relating to the employment contract, the prohibition of excessive recruitment fees, the establishment of the Wage Earners' Welfare Board, and the requirement for pre-departure orientation training. Each of these provisions reflects an attempt to address specific governance failures that have characterized Bangladesh's migration system and that have been identified as key drivers of worker vulnerability.

The requirement for a written employment contract that specifies the terms and conditions of employment, including wages, working hours, leave entitlements, and conditions of accommodation, is in principle a fundamental protection for migrant workers. If the worker knows, before departure, the exact terms of the employment they are accepting, and if those terms meet minimum standards of decency, and if the contract is enforceable against the employer, then the worker is in a significantly stronger position than a worker who departs on the basis of verbal assurances from a recruitment agent. In practice, however, the employment contract requirement has been subverted by the widespread practice of contract substitution, in which workers are presented with entirely different, and generally much less favorable, contracts upon arrival in the destination country, and are then effectively trapped in these inferior employment relationships because they have already paid their migration costs and cannot afford to return home.

The prohibition on excessive recruitment fees is a further critical protection that has been systematically violated in practice. The OEMA 2013 sets maximum recruitment fees that workers may be charged by licensed recruitment agents, in principle reflecting the actual costs of the migration process rather than an arbitrary extraction by the recruitment industry. In practice, however, workers routinely pay fees far in excess of the legal maximums, because the real costs of securing particular types of employment in particular destination countries significantly exceed the official maximums, and because the enforcement of the fee limits by BMET (Bureau of Manpower, Employment and Training) is extremely weak.

### 3.3 The Institutional Architecture: MEWOE, BMET, BOESL, and the Welfare Board

The governance of labour migration in Bangladesh is distributed among several institutional actors whose mandates partially overlap and whose coordination has been a persistent source of administrative inefficiency and regulatory failure.

The Ministry of Expatriates' Welfare and Overseas Employment (MEWOE) was established in 2001 as the primary government ministry responsible for the promotion of overseas employment

and the welfare of Bangladeshi migrant workers. MEWOE is responsible for the formulation of migration policy, the negotiation of bilateral labour agreements with destination countries, the licensing and regulation of private recruitment agencies, and the overall oversight of the migration system. The Ministry's dual mandate, to promote migration and to protect migrants, creates an inherent tension that has consistently been resolved in favor of promotion.

The Bureau of Manpower, Employment and Training (BMET) functions under MEWOE and is the primary operational agency for migration governance. BMET is responsible for the registration of migrant workers (through the Smart Card system), the approval of employment contracts, the accreditation of pre-departure orientation training institutions, the licensing of recruitment agencies, and the enforcement of the Act's provisions on recruitment practices. BMET's capacity to perform these functions effectively has been persistently limited by inadequate staffing, resources, and data systems, and its enforcement role has been compromised by the relationships between its officials and the recruitment industry that it is supposed to regulate.

The Bangladesh Overseas Employment and Services Limited (BOESL) is a state-owned enterprise that operates as a government-to-government recruitment agency, managing the recruitment of Bangladeshi workers for employers in destination countries that prefer to recruit through government channels rather than private agents. BOESL is in principle less susceptible to the fee extraction and contract substitution problems that characterize the private recruitment industry, because it operates on a non-profit basis and is subject to direct government oversight. In practice, however, BOESL has been criticized for bureaucratic inefficiency, limited reach, and failure to provide the quality of service that workers need.

The Wage Earners' Welfare Board (WEWB) was established under the 2013 Act to manage a fund for the welfare of migrant workers and their families, financed by levies on migrant workers and employers, and fees from recruitment agents. The WEWB provides a range of services to migrant workers, including financial assistance to distressed workers and their families, legal assistance in destination countries, support for the reintegration of returning migrants, and insurance and compensation for workers who suffer injury or death abroad. The WEWB's financial and administrative capacity to fulfill these obligations has been limited, and the services provided have been consistently inadequate relative to the scale of need.

The Labour Welfare Wings (LWWs) established in Bangladeshi diplomatic missions in destination countries are the primary institutional mechanism for providing consular protection and assistance to Bangladeshi migrant workers abroad. LWWs are staffed by Labour Counselors and Labour Attaches, who are responsible for providing legal assistance to workers in disputes with employers, facilitating the repatriation of workers in distress, investigating complaints of abuse and rights violations, and monitoring the conditions of Bangladeshi workers in the destination country. The effectiveness of the LWWs has varied considerably across destinations, and has been consistently criticized as inadequate, particularly in countries with large Bangladeshi worker populations, where the ratio of staff to workers is extremely unfavorable.

### 3.4 Pre-Departure Orientation: The Legal Framework and Its Limitations

The OEMA 2013 requires that all migrant workers undergo a pre-departure orientation training (PDOT) before leaving Bangladesh. PDOT programs are intended to provide workers with information about the destination country, their legal rights under both Bangladeshi and destination-country law, the employment conditions they will encounter, the support services available to them in case of difficulty, and the basic skills they will need to navigate their migration experience. PDOT is accredited by BMET, and certificates of completion are required for migration registration.

The concept of pre-departure orientation is based on the empirically well-supported premise that informed migrants are better able to protect their rights, resist exploitation, and access support services when things go wrong. Research consistently shows that migrant workers who are better informed about their rights and the resources available to them have better migration outcomes than workers who are poorly informed. PDOT is therefore a potentially valuable protective mechanism.

In practice, however, PDOT in Bangladesh has fallen far short of its potential. Several studies, including research conducted by Transparency International Bangladesh and the Refugee and Migratory Movements Research Unit (RMMRU), have documented that PDOT programs are frequently conducted as formalities, lasting only a few hours rather than the full program duration, providing inadequate information about workers' legal rights, failing to address the specific risks faced by workers in particular destination countries or employment sectors, and being conducted in ways that workers find confusing or inaccessible. Workers who complete PDOT often arrive in destination countries with little practical understanding of their rights or of how to seek help if their rights are violated.

The reform of PDOT is a priority identified in the Labour Reform Commission's April 2025 report, which recommends that PDOT programs be significantly enhanced in content, duration, and quality, with particular attention to the rights of women migrants and to the specific conditions of the principal destination countries and employment sectors. The use of digital technology to deliver PDOT content in forms that workers can access repeatedly, including on their mobile phones after departure, is identified as a promising innovation that could significantly improve the information available to workers.

### 3.5 The Smart Card System and Digital Migration Governance

The Smart Card, which is a biometric identity document issued to registered migrant workers by BMET, is the foundation of Bangladesh's digital migration registration system. The Smart Card records the worker's personal information, employment contract details, migration history, and insurance coverage, and it is intended to provide a verifiable record of the worker's legal status and employment terms that can be presented to authorities in both Bangladesh and the destination country.

The Smart Card system has potential to significantly improve migration governance by creating reliable data on the number, location, employment status, and migration history of Bangladeshi workers abroad, and by providing workers with a verifiable record of their contract terms. In practice, however, the system has been subverted by several weaknesses. The data quality of

Smart Card records is uneven, reflecting the broader weaknesses of BMET's administrative systems. Many workers migrate irregularly, without Smart Cards, because the official registration process is costly, time-consuming, or inaccessible, particularly for women workers who face additional barriers to formal registration. The Smart Card data is not integrated with the data systems of destination-country governments, limiting its utility in the destination-country context.

The development of a more effective digital migration governance system, integrating the Smart Card with the BMET and MEWOE data systems, the destination-country employment authorization systems, and the Wage Earners' Welfare Board's insurance and compensation records, is a significant reform priority. The Bangladesh Bank's financial inclusion initiatives, which have expanded mobile financial services (MFS) coverage to previously unbanked populations including rural migrants, offer additional opportunities for integrating remittance data into the digital migration governance framework, providing more accurate information on the economic outcomes of migration and the costs extracted by the migration industry.

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## CHAPTER FOUR: THE KAFALA SYSTEM, GULF LABOUR MARKETS, AND THE ARCHITECTURE OF WORKER SUBORDINATION

### 4.1 The Origins and Structure of the Kafala System

The kafala system, whose name derives from the Arabic word meaning sponsorship or guarantee, is the distinctive legal framework that has governed the employment and residence of migrant workers in the Gulf Cooperation Council (GCC) states, Jordan, and Lebanon since at least the 1950s. Under the kafala system, each migrant worker must be sponsored by a kafeel (sponsor), who is typically the worker's employer. The sponsorship relationship ties the worker's legal right to remain in the country to the continued existence of the employment relationship with the sponsoring employer, and grants the kafeel extensive legal powers over the worker's status and mobility.

The defining features of the kafala system as it operated in most of the Gulf states until recently were: the worker cannot change employers without the employer's consent; the worker cannot leave the country without the employer's consent (the requirement for an exit visa issued by the employer); the worker's residence permit is cancelled if the employment relationship ends, whether by dismissal, resignation, or completion of the contract; the employer retains the worker's passport, ostensibly for administrative convenience but effectively as a mechanism of control; and complaints by workers against employers are generally not investigated as seriously as complaints by employers against workers.

This system creates a structural power relationship between employer and worker that is, in the assessment of the ILO, the UN Special Rapporteur on Contemporary Forms of Slavery, and numerous human rights organizations, fundamentally incompatible with the international legal standards of workers' freedom of movement and freedom from forced labour. A worker who cannot change employers, cannot leave the country, and cannot seek legal redress against an

exploitative employer without the risk of immediate deportation is, in the most practically meaningful sense, a worker who is not free. The kafala system has been directly compared to the indentured labour system of the colonial period by scholars including Andrzej Kapiszewski, who described it as a twenty-first century form of bonded labour.

The political economy of the kafala system reflects the specific characteristics of the Gulf states as labour-receiving societies. The Gulf states are characterized by very high proportions of foreign workers in the population (in Qatar, nearly 90 percent of the total population is foreign nationals; in the UAE, approximately 88 percent), very small indigenous populations, and an ideology of temporary migration in which the presence of migrant workers is conceptualized as strictly transactional and time-limited, with no prospect of permanent residence or citizenship for the overwhelming majority of workers. The kafala system was designed to enforce this ideology of temporariness and to maintain the total control of the state and employer over the migrant worker's presence and activities.

The legal analysis of the kafala system reveals multiple violations of international legal norms. The ILO Forced Labour Convention, 1930 (Convention No. 29), which all GCC states have ratified, prohibits forced labour, defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. The requirement for an employer's permission to change jobs or leave the country, backed by the threat of deportation, constitutes a form of compulsion that the ILO has identified as a forced labour indicator. The ICMW, if ratified by GCC states (which it has not been), would provide more explicit protections, including the right of migrant workers to change their employment or their employer, the right to leave any country including the state of employment, and the right to liberty of movement in the receiving state.

### 4.2 Kafala Reform: Recent Developments in the Gulf States

The international outcry over the treatment of migrant workers in the Gulf states, which intensified in the context of the preparation for the 2022 FIFA World Cup in Qatar, has accelerated a process of reform of the kafala system that had been under way in several GCC states for some years. The reforms have varied significantly in scope and ambition across different states, and the implementation of even the most ambitious announced reforms has been imperfect and contested.

Qatar undertook the most dramatic and internationally visible kafala reforms in connection with the World Cup preparations. Following sustained pressure from the ILO, international trade unions, human rights organizations, and the governments of major labour-sending countries, Qatar introduced a series of labour law reforms between 2019 and 2022 that substantially modified the kafala system. The requirement for exit visas was abolished for most workers in 2020, allowing workers to leave the country without employer permission. The requirement for employer consent to job changes was abolished for most workers in 2020, allowing workers to change employers after completing a minimum period of employment. A minimum wage was introduced in 2020, the first in Qatar's history, covering all workers regardless of nationality or sector. A Workers' Support and Insurance Fund was established to provide compensation for workers whose employers fail to pay wages or other entitlements.

These Qatari reforms were widely acknowledged by the ILO as significant steps forward, though the ILO also noted concerns about the pace and completeness of implementation, the significant gaps in coverage (particularly for domestic workers, who were excluded from many of the reforms), and the continuing problem of employer retaliation against workers who seek to exercise their new rights.

Saudi Arabia's formal abolition of the kafala system, announced in June 2025 and implemented in October 2025, represents the most significant recent development in Gulf labour governance. The announcement affects approximately 13.4 million foreign workers in Saudi Arabia, including an estimated 2.6 million Bangladeshi workers. Under the new framework, workers can change employers without their sponsor's consent, can leave the country without an employer-issued exit visa, and have improved access to labour courts and complaint processes. Saudi Arabia's Vision 2030 economic reform program, which requires significant increases in labour market flexibility to support economic diversification, is the principal driver of these reforms, though international pressure from labour-sending countries and organizations has also played a role.

The significance of Saudi Arabia's kafala abolition for Bangladeshi workers cannot be overstated. Saudi Arabia is the single largest destination country for Bangladeshi migrant workers, and the kafala system has been identified by Bangladeshi labor rights organizations as the primary structural factor enabling the exploitation of Bangladeshi workers in Saudi Arabia. The practical implications of the abolition will, however, depend critically upon implementation: upon whether workers are aware of their new rights, whether employers comply with the new framework, whether effective enforcement mechanisms are in place, and whether the reform extends in practice to the categories of workers, particularly domestic workers, who were historically most vulnerable under the kafala system.

The situation in the UAE, Kuwait, Bahrain, and Oman remains more complex. While all of these states have introduced some reforms to their kafala systems in recent years, including limited job mobility provisions and improvements to wage payment systems, no other Gulf state has followed Saudi Arabia in formally abolishing the system. The UAE's domestic workers remain largely outside the reform framework, as do workers in the construction sector in several Gulf states. The ILO continues to identify kafala-related forced labour indicators in multiple Gulf states.

The legal analysis of kafala reform connects to broader theoretical debates about the nature of freedom of contract and freedom of movement in international labour law. The ILO's normative framework for international labour migration, as expressed in Convention No. 97 and No. 143 and the Multilateral Framework, requires that migrant workers have the right to change employers and the right to freedom of movement within the receiving state, and it identifies restrictions on these freedoms as constituting forced labour when backed by the threat of deportation. The GCC states' historical resistance to these norms reflects the tension between their economic interests in maintaining a compliant and captive labour force and their formal commitments as ILO member states.

### 4.3 The Domestic Worker Exclusion: A Critical Legal Gap

The category of domestic worker represents one of the most significant and persistent lacunae in the kafala reform agenda. In most GCC states, domestic workers, who are predominantly women from South and Southeast Asia including Bangladesh, the Philippines, Sri Lanka, Ethiopia, and other countries, are excluded from the coverage of general labour law, which applies only to commercial and industrial establishments and not to private households. The exclusion of domestic workers from labour law protection is not unique to the Gulf; it is a global phenomenon reflecting the historical failure of labour law to recognize care work and domestic service as legitimate forms of labour deserving full legal protection.

In the Gulf context, however, the domestic worker exclusion has particularly severe consequences because it is combined with the kafala system's tying of residence status to employment, and with the physical isolation of domestic workers in private homes where labour inspection is practically impossible. A domestic worker who is subjected to physical abuse, sexual harassment, non-payment of wages, excessive working hours, or confinement to the employer's premises has, in practice, extremely limited recourse. She cannot change employers without the employer's consent (because domestic workers are typically excluded from the job mobility reforms introduced by the general kafala reform). She cannot leave the employer's house without permission. She cannot contact the Bangladesh embassy easily because her phone and freedom of movement are controlled by the employer. And if she complains to the authorities, she faces the risk of counter-charges by the employer and deportation.

The scale of abuse of domestic workers in the Gulf states is extensively documented. The Human Rights Watch and Amnesty International have produced numerous reports documenting cases of physical abuse, sexual assault, unpaid wages, document confiscation, and effective imprisonment of domestic workers in Gulf households. The ILO's 2021 flagship report on domestic workers noted that domestic workers account for a disproportionate share of serious labour rights violations in the Gulf region, and that the legal exclusion from labour protection is the primary enabling factor.

Bangladesh's response to the domestic worker crisis has been a series of partial and inadequate measures. The deployment of female domestic workers to several Gulf countries has been periodically suspended and resumed as evidence of abuse accumulates and diplomatic pressure mounts. The Memoranda of Understanding (MOUs) negotiated between Bangladesh and destination countries typically include provisions on the standard employment contract for domestic workers, requiring payment of a minimum wage, rest periods, and other basic protections, but these provisions are rarely enforced. The introduction of free visa recruitment for domestic workers in Saudi Arabia in 2017, which was subsequently expanded, has been associated with a reduction in recruitment costs for domestic workers, but has also raised concerns about the adequacy of the protection framework.

The ratification of ILO Convention No. 189 on Domestic Workers by Bangladesh is an important step, but its practical effect depends upon the willingness of destination countries to extend comparable protections to Bangladeshi domestic workers. The ILO's Domestic Workers Convention has not been ratified by any GCC state, reflecting the persistent refusal of these states to extend full labour law protection to domestic workers.

### 4.4 Wage Theft and Non-Payment of Wages: A Systemic Governance Failure

One of the most pervasive and economically damaging rights violations suffered by Bangladeshi migrant workers in the Gulf and elsewhere is the non-payment or underpayment of wages. Workers who travel to the Gulf expecting the wages specified in their employment contracts routinely find that they receive less than contracted, that wages are withheld for months at a time, that deductions are made from wages for accommodation, food, or other items that were promised to be free, or that employers simply refuse to pay wages at all.

The ILO's Wage Protection System (WPS), adopted by several GCC states including the UAE, Qatar, Saudi Arabia, and Bahrain, is intended to address this problem by requiring employers to pay wages electronically through a system that creates a digital record of wage payments, allowing authorities to identify non-compliant employers. The WPS has been credited with improving wage payment compliance among employers covered by the system, but its coverage is incomplete, its enforcement is inconsistent, and it does not address many of the more subtle forms of wage theft such as deductions for accommodation or the replacement of promised wages with lower actual wages.

For Bangladeshi workers who experience wage theft, the options for redress are severely limited. Filing a complaint with the Labour Court or Ministry in the destination country requires navigating an unfamiliar legal system in a foreign language, often without legal representation, while risking deportation if the employer counter-complains about the worker's status. The Bangladeshi Labour Welfare Wings in destination countries can provide some assistance, but their capacity is grossly inadequate relative to the scale of the problem. The practical result is that wage theft is almost entirely unpunished and endemic.

The total economic cost of wage theft to Bangladeshi migrant workers is not reliably estimated, but it is certainly large. If even a small proportion of the 2.6 million Bangladeshi workers in Saudi Arabia are victims of significant wage theft, the total loss in any given year could amount to hundreds of millions of dollars, a sum that dwarfs the government's expenditure on the protection of migrant workers' rights.

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## CHAPTER FIVE: RECRUITMENT, MIGRATION COSTS, AND THE PROBLEM OF DEBT MIGRATION

### 5.1 The Recruitment Industry: Structure, Incentives, and Governance

The recruitment of Bangladeshi workers for overseas employment is conducted primarily by a large and fragmented industry of private recruitment agencies, which are licensed by BMET and are legally responsible for the conduct of the recruitment process. As of 2024, there are approximately 1,400 licensed recruitment agencies in Bangladesh, ranging from large, well-capitalized firms with extensive networks of sub-agents and overseas contacts, to small operations that may conduct recruitment as a secondary activity to their primary business.

The recruitment industry generates its income from fees charged to workers, from commissions paid by overseas employers or manpower sub-agents in destination countries, and from various informal payments throughout the migration process. The structure of revenue generation creates multiple conflicts of interest that systematically disadvantage workers. The pressure to maximize fee income from workers creates incentives to misrepresent the terms of employment available, to charge fees above the legal maximums, and to place workers in employment that may not be appropriate for their skills or expectations. The commission structure creates incentives to prioritize employers who pay the highest commissions over employers who offer the best working conditions.

The regulation of the recruitment industry by BMET has been consistently inadequate. The licensing system, while formally requiring agencies to meet certain capital, infrastructure, and conduct requirements, has not effectively prevented the operation of fraudulent or exploitative agencies. The enforcement of the legal maximum recruitment fees has been extremely weak, with surveys consistently finding that actual fees paid significantly exceed the legal limits. The deregistration of agencies for misconduct is rare, and the criminal prosecution of agency operators for recruitment fraud is even rarer, reflecting both the limited capacity of BMET's enforcement apparatus and the political connections that the recruitment industry has cultivated with political parties and government officials.

The recent development of the Fair Recruitment Initiative, supported by the ILO and involving commitments from both Bangladeshi recruitment agencies and major international employers, represents an attempt to address recruitment practices through multi-stakeholder governance rather than purely through state regulation. Under the initiative, participating employers commit to recruiting workers at zero or reduced cost to workers, effectively shifting the cost of recruitment from workers to employers, who are better placed to bear it. This approach, which is aligned with the ILO's principle of employer-paid migration, has achieved some successes in specific corridors, particularly in the electronics manufacturing sector in Malaysia, but has not yet achieved sufficient scale to significantly reduce the overall level of recruitment fees paid by Bangladeshi workers.

### 5.2 The Economics of Migration Costs

The cost of migration is one of the most significant determinants of migrant workers' welfare outcomes and a central concern of the reform agenda for Bangladesh's migration governance. Research by the Refugee and Migratory Movements Research Unit (RMMRU), the World Bank, and other organizations has documented that Bangladeshi workers pay among the highest migration costs in the world relative to their expected earnings, with documented costs ranging from $1,500 to $5,000 or more for employment in the Gulf states, and even higher for employment in Malaysia and other Southeast Asian destinations.

These migration costs significantly exceed the economic rationale, representing not only legitimate costs of the migration process such as travel, documentation, medical examination, and orientation training, but also extractive fees charged by recruitment agents, sub-agents, and intermediaries at multiple stages of the migration supply chain. The high migration costs are made possible by the structural features of the migration system: the lack of freely available

information about legitimate costs and employers, the oligopolistic control of particular destination-country markets by networks of agents and sub-agents, the desperation of workers who see migration as their only realistic path to economic improvement, and the inadequacy of regulatory oversight.

The financing of migration costs through debt is the rule rather than the exception for Bangladeshi migrant workers. Workers typically borrow from multiple sources, including moneylenders at high interest rates, microfinance institutions, family members, and the recruitment agents themselves (through arrangements that resemble the dadon system described in Part Fifteen), to finance their migration. The resulting debt creates a condition of economic vulnerability that the ILO has identified as one of the key indicators of debt bondage and forced labour: a worker who owes a large debt that can only be repaid from migration earnings, and whose ability to repay depends on the continuation of their employment, is a worker who cannot realistically exercise the option of leaving their employment, even if it turns out to be exploitative.

The World Bank's Global Knowledge Partnership on Migration and Development (KNOMAD) has calculated that the migration costs paid by Bangladeshi workers, relative to the wages they earn, are among the highest in the world, and that the cost-to-earnings ratio has not significantly decreased despite years of reform efforts. This finding reflects the systemic nature of the problem: high migration costs are not an accidental feature of Bangladesh's migration industry but a structural outcome of the power dynamics between workers, recruitment agents, and employers that will only change if there is fundamental reform of the governance framework.

### 5.3 The Employer-Pays Principle and Its Implementation Challenges

The principle that the costs of recruitment should be borne by employers rather than workers, known as the employer-pays principle, has been formally adopted by numerous international frameworks including the ILO's Multilateral Framework on Labour Migration, the UN Global Compact for Migration, and the International Recruitment Integrity System (IRIS) standard operated by the International Organization for Migration (IOM). The employer-pays principle reflects the straightforward logic that employers are the primary beneficiaries of migrant labour and are better placed than workers to bear the costs of recruitment, and that worker-paid recruitment fees create the debt relationships and information asymmetries that enable exploitation.

Bangladesh has formally endorsed the employer-pays principle in its national migration policy and in the recommendations of the Labour Reform Commission's 2025 report. However, the practical implementation of the principle in Bangladesh's principal migration corridors faces significant structural obstacles. In the Gulf states, where the dominant recruitment model involves employers paying sub-agents in the destination country who then share fees with recruitment agents in Bangladesh, the shift to employer-paid recruitment requires bilateral negotiation and regulatory reform on both sides of the migration corridor. It also requires the development of mechanisms for verifying employer compliance, which is challenging in the Gulf context where employment contracts are frequently in Arabic and enforcement is in the hands of destination-country authorities.

The Responsible Business Conduct framework, which has been developed in the context of international supply chain accountability and reflects the UN Guiding Principles on Business and Human Rights, provides an additional mechanism for promoting the employer-pays principle through the accountability of international brands and corporations for the recruitment practices of their suppliers. Major international brands that source products manufactured by workers who have paid excessive migration fees are exposed to reputational and legal risks under this framework, and this commercial pressure has been an important driver of improvements in recruitment practices in specific supply chains. The application of this framework to the migration corridors through which Bangladeshi workers are recruited for Gulf employers could be a significant lever for reform, though it would require the development of supply chain due diligence requirements that extend to the migration process itself.

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## CHAPTER SIX: WOMEN MIGRANT WORKERS: GENDERED VULNERABILITIES AND LEGAL RESPONSES

### 6.1 The Feminization of Bangladeshi Labour Migration

The migration of women for overseas employment from Bangladesh has a complex and contested history. In the 1980s and 1990s, the Bangladeshi government maintained a de facto ban on the migration of women for domestic work, reflecting a paternalistic approach to women's migration that treated women as primarily domestic subjects, and a deep ambivalence about the social implications of women leaving their families and communities for work abroad. The ban was formally ended in 2003 when the government allowed women aged eighteen and above to migrate for employment, but restrictions and reservations about women's migration have persisted in the form of various regulatory requirements and periodic suspensions of women's migration to specific destinations.

The number of Bangladeshi women migrating for overseas employment has grown significantly in recent years, though women still constitute a substantially smaller proportion of Bangladeshi migrant workers than in countries such as the Philippines, Sri Lanka, and Indonesia where female labour migration is more institutionally developed. The ILO estimates that women constitute approximately ten to fifteen percent of formal Bangladeshi migrant worker outflows, though this figure may underestimate actual migration because many women migrate through informal channels and their migration is not captured in official statistics.

The principal employment sectors for Bangladeshi women migrant workers are domestic service in the Gulf states (particularly Saudi Arabia, Kuwait, Jordan, and Lebanon), textile and garment manufacturing in Jordan, Malaysia, and parts of the Middle East, and, to a lesser extent, professional and semi-professional occupations. The concentration of women migrants in domestic service creates particular vulnerabilities, because domestic workers are, as analyzed in Chapter Four above, excluded from the coverage of labour law in most destination countries and are employed in private households where they are isolated from external oversight and support.

The feminist analysis of women's migration from Bangladesh draws upon both the material and the representational dimensions of gender inequality. At the material level, women migrate because of the severe economic disadvantages they face in the domestic labour market: lower wages than men in the formal sector, limited access to decent work in the informal economy, and the structural failure of the domestic welfare state, analyzed in Parts Fourteen and Fifteen, to provide adequate economic security for women and their children. At the representational level, the treatment of women's migration as problematic, dangerous, or somehow contrary to family values reflects and reproduces the gender ideology that subordinates women's economic agency to their domestic roles.

The research of Naila Kabeer on the relationship between women's employment and empowerment is directly relevant here. Kabeer's influential work has demonstrated that women's access to paid employment outside the home is associated with significant improvements in their bargaining power within the family, their access to economic resources, and their sense of personal agency. However, Kabeer and other scholars have also documented the ways in which women's employment, including migration for employment, can reproduce rather than transform gender inequalities when it occurs in conditions of severe exploitation, harassment, and violence.

### 6.2 Legal Protection Gaps for Women Migrant Workers

The legal protection framework for women migrant workers in Bangladesh has significant gaps at every stage of the migration process. At the pre-migration stage, the regulatory framework does not adequately address the specific vulnerabilities of women workers, including the risk of trafficking, the particular information needs of women who may be migrating independently for the first time, and the barriers that women face in accessing formal migration channels. The requirement for a guardian's permission for women under 35 to migrate, which was a feature of the earlier regulatory framework, was a paternalistic restriction that created barriers to women's migration rather than protecting women from exploitation, though it was defended by some as a protection against trafficking.

At the recruitment stage, women are particularly vulnerable to fraudulent recruitment, in which the employment offered, typically described as domestic work in a respectable household, turns out to be exploitative, involves conditions of effective imprisonment, or in some cases involves sexual exploitation. The trafficking of women under the guise of legitimate labour migration is a serious and persistent problem in Bangladesh, and the inadequacy of the regulatory framework for distinguishing legitimate migration from trafficking is a critical governance failure.

At the destination stage, women domestic workers face the accumulated vulnerabilities described in Chapter Four: exclusion from labour law protection, isolation in private homes, physical and sexual abuse by employers, confiscation of passports, non-payment of wages, and extreme difficulty in seeking help from Bangladeshi diplomatic missions. The stories documented by organizations such as BRAC, RMMRU, and international human rights organizations reveal a pattern of systematic abuse that is, in the view of the UN Special Rapporteur on Contemporary Forms of Slavery, a form of modern slavery.

The legal response to these vulnerabilities has been inadequate. The Overseas Employment and Migrants Act 2013 contains provisions specifically addressing the protection of women migrant workers, including requirements for enhanced pre-departure orientation for women, increased oversight of recruitment practices for women, and a telephone helpline for women in distress abroad. However, these provisions have been poorly implemented, and the fundamental structural vulnerabilities arising from the kafala system and the domestic worker exclusion from labour law have not been effectively addressed through the bilateral diplomatic channel.

The 2025 amendment to the Bangladesh Labour Act, which extended the definition of worker to include domestic workers within Bangladesh, represents a significant improvement in the domestic framework, but it does not address the situation of Bangladeshi women working as domestic workers abroad, because the protections of the Bangladesh Labour Act do not have extraterritorial application. The protection of Bangladeshi domestic workers in the Gulf requires engagement with the destination-country legal framework, bilateral negotiation for the extension of labour law protection to domestic workers in destination countries, and the development of effective consular protection mechanisms that reach workers in private homes.

### 6.3 Gender-Based Violence and Trafficking

The intersection of gender-based violence and labour migration is one of the most urgent and most inadequately addressed dimensions of Bangladesh's migration governance. Women who migrate for employment are exposed to gender-based violence at multiple stages: during the recruitment process (including sexual exploitation by recruitment agents or sub-agents); in transit (including during stopovers in third countries); and in the destination country (including physical and sexual abuse by employers or their family members).

Human trafficking is the most extreme form of exploitation at the intersection of migration and gender-based violence, and Bangladesh faces a serious trafficking problem both as a country of origin and as a country of transit and destination. The UN Office on Drugs and Crime (UNODC) has identified Bangladesh as a significant country of origin for trafficked persons, with women and girls being trafficked primarily for sexual exploitation and forced labour to India, Pakistan, and the Gulf states.

The primary domestic legal instrument for addressing trafficking in persons is the Prevention and Suppression of Human Trafficking Act, 2012, which defines trafficking broadly to include deceptive recruitment for exploitative employment abroad, and establishes criminal penalties for trafficking offences. The Act is supplemented by the National Plan of Action against Trafficking in Persons. However, the implementation of the anti-trafficking framework has been criticized by NGOs and international organizations as inadequate, with low rates of investigation and prosecution, limited support for trafficking victims, and a significant gap between the number of identified victims and the number of cases that result in successful prosecution.

The connection between the migration governance framework and the trafficking framework is important and often inadequately recognized in policy discussions. The structural features of the migration system that create vulnerability to trafficking, namely high migration costs, information asymmetries, the absence of safe and affordable formal migration channels, and the

lack of legal protection for migrant workers at the destination, are the same features that enable traffickers to exploit desperate workers. Reform of the migration governance framework to reduce migration costs, improve information, expand formal migration channels, and strengthen protection in destination countries is therefore also, simultaneously, anti-trafficking reform.

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## CHAPTER SEVEN: SOCIAL PROTECTION FOR MIGRANT WORKERS

### 7.1 The Social Protection Deficit in the Migration Corridor

The intersection of labour migration and social security is one of the most significant gaps in Bangladesh's legal framework. Migrant workers in the Gulf states are, in almost all cases, excluded from the coverage of the destination-country social security systems. GCC states do not provide unemployment insurance, old-age pension, or other standard social security benefits to foreign migrant workers, who are conceptualized as temporarily present in the country and therefore outside the scope of the domestic social contract.

The home country social security system also typically does not cover workers employed abroad. The Workers' Profit Participation Fund, the gratuity scheme, the compulsory group insurance, and other social security mechanisms of the Bangladesh Labour Act apply to workers employed in establishments in Bangladesh and do not extend to workers employed abroad. Migrant workers who leave Bangladesh for overseas employment effectively step outside both the domestic and the destination-country social security frameworks, entering a social protection void in which they are exposed to all the major social risks, including occupational injury, illness, disability, and old age, without any institutional framework for risk-sharing or compensation.

The magnitude of the occupational injury problem for Bangladeshi migrant workers is stark. An estimated 10,000 to 15,000 Bangladeshi workers die abroad each year, the majority from occupational injuries and work-related illnesses, particularly in the construction sector in the Gulf states. The death toll from construction work on the World Cup infrastructure projects in Qatar alone, estimated by various sources at between several hundred and several thousand, generated enormous international controversy and contributed to the acceleration of kafala reform in that country. The surviving families of workers who die abroad receive minimal compensation, often limited to the small benefit from the Wage Earners' Welfare Board and whatever the destination-country employer voluntarily offers.

The development of the Employment Injury Scheme (EIS) pilot in Bangladesh, analyzed in Part Fifteen, is directly relevant to the social protection needs of migrant workers. In February 2025, the ILO announced the extension of the EIS to workers in the Export Processing Zones, and the ILO has also been working with the STREAM program (Extending Social Protection to Migrant Workers and their Families in the South Asia-Gulf Corridor) on the extension of social protection mechanisms to the migration corridor. The STREAM program, launched in December 2024 with a four-year mandate, represents an innovative attempt to develop social protection mechanisms specifically adapted to the cross-border nature of labour migration.

## 7.2 Bilateral Social Security Agreements and Their Limitations

Bilateral social security agreements (BSSAs) between labour-sending and labour-receiving countries are the standard mechanism in developed-country migration corridors for ensuring that migrant workers are not excluded from social security protection. BSSAs typically provide for the totalization of social security contributions made in both countries, the portability of benefits between countries, and the avoidance of double social security contributions.

Bangladesh has negotiated very few bilateral social security agreements, primarily because the Gulf states do not operate contributory social security systems for migrant workers and are therefore not in a position to conclude agreements of the standard type. The development of alternative mechanisms for social protection in the Bangladesh-Gulf migration corridor requires creative institutional design that goes beyond the standard bilateral social security agreement framework.

Several possible models have been proposed and partially tested. One model involves a bilateral contribution to a joint fund, managed by an independent institution, from which benefits are paid to workers who suffer occupational injuries or become too ill to work. This is the model that has been tested in various forms in the ILO's EIS pilot and in several bilateral arrangements between the Philippines and Gulf states. A second model involves the extension of the destination-country occupational injury compensation framework to migrant workers on the same terms as national workers, an approach that Qatar has taken in some respects and that Saudi Arabia has committed to under the kafala abolition framework. A third model involves home-country insurance schemes financed by a combination of employer premiums (paid at time of recruitment), worker contributions, and government subsidies, which provide coverage for workers regardless of the destination country.

The portability of pension entitlements is a separate and equally important issue. Workers who spend ten, fifteen, or twenty years working in the Gulf states, contributing to the economic development of those states, receive virtually no pension credit in return, because they are excluded from the destination-country pension systems and the years abroad are effectively a gap in their pension contribution record. The development of mechanisms for recognizing years of overseas employment in the calculation of home-country pension entitlements, either through adjustments to the Bangladesh pension framework or through bilateral negotiations on the portability of pension credits, is a significant reform priority.

## 7.3 Remittance Portability and Financial Inclusion

The financial inclusion of migrant workers and their families is closely connected to the social protection agenda. Workers who can access formal financial services, including savings accounts, insurance products, and pension schemes, through digital channels are better positioned to manage the financial risks of migration and to build financial security for themselves and their families than workers who rely entirely on cash and informal financial services.

The expansion of mobile financial services (MFS) in Bangladesh, through systems such as bKash, Nagad, and Dutch-Bangla Bank's Rocket, has created new channels for remittance transfers that are faster, cheaper, and more transparent than traditional informal channels (hundi). The Bangladesh Bank has actively promoted the use of formal remittance channels, including through incentive payments to workers who remit through formal channels. However, significant challenges remain in connecting MFS-based remittance systems to formal saving, insurance, and pension products that could help migrant workers build financial security.

The development of migrant worker-specific financial products, including microinsurance for occupational injury and death, pension savings products with favorable interest rates, and housing and education finance products linked to remittance income, is an area where Bangladesh's financial sector, working in partnership with the government and international financial institutions, could make a significant contribution to the welfare of migrant workers and their families.

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## CHAPTER EIGHT: INTERNATIONAL LAW AND THE RIGHTS OF BANGLADESHI MIGRANT WORKERS

### 8.1 The International Human Rights System and Migrant Workers

The relationship between the international human rights system and migrant workers' rights is complex and has evolved significantly in recent decades. The formal universality of international human rights, which applies to all persons regardless of nationality or immigration status, has been progressively elaborated in the context of migration through the work of the UN treaty bodies, the UN Special Rapporteurs, and the International Labour Organization.

The UN Committee on Migrant Workers, which oversees the implementation of the ICMW, has been particularly active in developing the normative content of the Convention's obligations. Bangladesh, as a state party to the ICMW, is required to submit periodic reports to the Committee and to engage with the Committee's recommendations. The Committee has identified numerous areas in which Bangladesh's compliance with its ICMW obligations is deficient, including the adequacy of the recruitment regulation framework, the protection of women migrant workers, the access to consular protection for workers abroad, and the social protection provisions for migrants and their families.

The UN Special Rapporteur on the Human Rights of Migrants has conducted several country visits to major labour-sending countries in South Asia, and has issued recommendations on the protection of migrant workers' rights that are directly applicable to Bangladesh. The Special Rapporteur's 2024 report on migrant workers in the Gulf corridor specifically addressed the situation of South Asian workers including those from Bangladesh, highlighting the continuing problems of the kafala system, excessive recruitment fees, and the exclusion of domestic workers from legal protection.

The ILO's supervisory mechanisms, including the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA), provide a further accountability mechanism for Bangladesh's compliance with ILO labour migration standards. The CEACR has made observations on Bangladesh's compliance with Convention No. 143 (Migrant Workers Convention) and Convention No. 97, highlighting concerns about the adequacy of the legislative framework, the enforcement of recruitment fee limits, and the protection of women migrant workers.

### 8.2 The Global Compact for Migration: Implementation and Accountability

The UN Global Compact for Safe, Orderly and Regular Migration, adopted in Marrakesh in December 2018, represents the most recent and comprehensive international framework for migration governance. Bangladesh was one of the active proponents of the Global Compact and is committed to its implementation. The Compact identifies 23 objectives for improving migration governance, several of which are directly relevant to the protection of Bangladeshi migrant workers.

Objective 6, which calls for facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work, directly addresses the recruitment fee problem and the employer-pays principle. Objective 7, which calls for addressing and reducing vulnerabilities in migration, including the specific vulnerabilities of women, children, and workers in informal employment, is directly relevant to the situation of Bangladeshi women domestic workers. Objective 18, which calls for investing in skills development and facilitating mutual recognition of skills, qualifications and competencies, addresses the skills gap that results in Bangladeshi workers receiving lower wages than workers from other countries with equivalent skills and education levels but better qualification recognition frameworks.

Bangladesh's progress on Global Compact implementation has been assessed in its national report to the International Migration Review Forum. The report documents progress on several fronts, including the enactment of the OEMA 2013 and its implementing rules, the development of the pre-departure orientation training system, the establishment of the Wage Earners' Welfare Board, and the expansion of the Smart Card registration system. However, the report also acknowledges significant gaps in implementation, particularly in the area of recruitment fee reduction and the protection of women migrant workers.

The International Migration Review Forum held in 2024 provided an important opportunity for Bangladesh to assess its progress and to make new commitments on migration governance reform. The review identified continued challenges in the area of recruitment practices, social protection for migrants, and the protection of domestic workers as priorities for the next review cycle.

### 8.3 Bilateral Labour Agreements: Architecture and Effectiveness

Bilateral labour agreements (BLAs) between Bangladesh and destination countries are the primary instrument through which Bangladesh seeks to protect the rights of its migrant workers in specific countries. BLAs are typically negotiated at the level of Memoranda of Understanding

(MOUs) or government-to-government agreements, and they establish the terms and conditions under which Bangladeshi workers may be recruited for employment in the destination country, including minimum wage standards, standard employment contract terms, procedures for dispute resolution, and mechanisms for the repatriation of workers in distress.

Bangladesh has concluded BLAs with Saudi Arabia, UAE, Qatar, Kuwait, Bahrain, Oman, Malaysia, South Korea, Jordan, Lebanon, and a number of other countries. The content and quality of these agreements vary significantly, reflecting the differences in bargaining power between Bangladesh and different destination countries. Agreements with countries that are heavily dependent on Bangladeshi labour, or that are under significant international pressure to improve their labour governance frameworks, tend to be more substantive than agreements with countries that have easier access to alternative labour sources.

The most significant structural weakness of the BLA framework is that Bangladesh, as a labour-sending country with a desperate need for the income that migration provides, has very limited bargaining leverage relative to destination countries that can easily find alternative labour sources if Bangladesh pushes too hard for improved protections. This asymmetry of bargaining power is the fundamental reason why the BLA framework has consistently produced agreements that are more favorable to employer interests than to worker rights, and why the implementation of even the modest protections included in BLAs has been difficult to enforce.

Several innovative approaches to bilateral labour governance have been developed in recent years that attempt to address this asymmetry. The use of labor mobility partnerships as part of broader trade and investment agreements, in which improved labour protection for migrant workers is linked to expanded market access for Bangladeshi exports, represents one approach. The EU's Trade for Decent Work initiative, which seeks to use trade preferences as leverage for improvements in labour rights in supply countries including Bangladesh, is potentially applicable in the migration context as well as in the garment sector context where it has been more extensively developed.

The development of a collective approach among labour-sending countries to bilateral negotiations with destination countries is another potential mechanism for strengthening the bargaining position of sending countries. Bangladesh, together with other major labour-sending countries in South Asia including the Philippines, India, Nepal, Sri Lanka, and Pakistan, has participated in the Colombo Process, a regional consultative process for labour-sending countries in Asia, which provides a forum for coordinating approaches to bilateral labour governance. The development of a more explicitly strategic coordination among labour-sending countries on the terms of their BLAs with Gulf states, including the possibility of joint action to raise the minimum terms available to all sending countries simultaneously, is an approach that has been discussed in academic and policy circles but has not yet been effectively pursued.

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## CHAPTER NINE: THE RETURN AND REINTEGRATION OF MIGRANT WORKERS

### 9.1 The Return Phase: Legal Framework and Institutional Gaps

The return and reintegration of migrant workers is one of the most neglected phases of the migration cycle in Bangladesh's legal and policy framework. The predominant orientation of migration governance in Bangladesh is toward the promotion of outward migration and the maximization of remittance inflows, and relatively little attention has been given to the questions of what happens when workers return, how they can effectively use the skills and savings acquired abroad, and how they can access the support they need to rebuild their lives in Bangladesh.

The scale of the return migration challenge is significant. Each year, hundreds of thousands of Bangladeshi workers return from overseas employment, some at the end of successful contracts, others following deportation, others fleeing abuse, and others returning permanently after years or decades abroad. The COVID-19 pandemic precipitated a mass return of approximately 500,000 workers in 2020, most of whom returned abruptly without savings and without employment prospects in Bangladesh, creating a severe economic and social crisis for hundreds of thousands of households.

The OEMA 2013 contains limited provisions on return and reintegration, primarily through the Wage Earners' Welfare Board's provision of emergency financial assistance to returning distressed workers. The Probashi Kallyan Bank, a state-owned bank established to serve migrants and returnees, provides access to credit for returning workers who wish to start businesses, but its outreach and services have been limited.

The ILO's research on returning migrant workers in Bangladesh has identified several critical gaps in the reintegration support framework. First, there is no systematic skills recognition mechanism that allows workers to demonstrate the skills they have acquired abroad to potential employers in Bangladesh. Workers who have spent years as skilled construction workers, machine operators, healthcare workers, or technicians in the Gulf return to Bangladesh unable to access equivalent employment because their skills are not formally recognized. The development of a Recognition of Prior Learning (RPL) framework, aligned with the national qualifications framework, would significantly improve the employment prospects of returning skilled workers.

Second, there is no systematic psychosocial support for workers who return having experienced abuse, exploitation, or trauma abroad. The mental health consequences of migration-related trauma, including post-traumatic stress disorder, depression, and anxiety, are significant and well-documented in the research literature, but the mental health system in Bangladesh has essentially no capacity to address these needs at scale.

Third, there is no systematic mechanism for ensuring that workers who return from abroad having been victims of wage theft, contract substitution, or other rights violations can access legal remedies. The practical difficulty of pursuing legal claims against employers in foreign countries, combined with the absence of effective mechanisms for enforcing foreign judgments in Bangladesh, means that in almost all cases of rights violations abroad, the perpetrators face no legal consequences.

### 9.2 The Development-Migration Nexus: Rethinking the Relationship

The dominant policy paradigm that frames labour migration as a development tool, in which migrant workers' remittances contribute to poverty reduction and economic growth, has been increasingly challenged in recent years by scholars and activists who argue that this paradigm obscures the human costs of migration and reproduces exploitative conditions by framing them as a contribution to development.

The critique, associated with scholars such as Robbie Shilliam and Jason Hickel, argues that the framing of migration as development naturalizes the global economic hierarchy that makes migration necessary in the first place. If Bangladesh had a more productive economy, more diversified employment opportunities, better wages, and more effective social protection, fewer workers would need to migrate under exploitative conditions, and the ones who chose to migrate could do so on the basis of genuine choice rather than desperate necessity. The promotion of migration as a development strategy, without addressing the structural economic conditions that make migration a necessity rather than a choice, is therefore a form of development that accepts and reproduces the conditions of underdevelopment rather than challenging them.

This critique does not imply that migration governance should be made more restrictive, or that the rights of workers who wish to migrate should be curtailed. It does imply that the reform agenda for Bangladesh's migration governance must be located within a broader political economy agenda that addresses the structural conditions, the inadequacy of domestic employment opportunities, wages, and social protection, that make exploitative migration a rational economic strategy for millions of Bangladeshi workers. The domestic labour law reforms analyzed in Parts One through Fifteen of this textbook are therefore directly connected to the migration governance reform analyzed in this Part, not as a substitute for migration reform, but as its necessary complement.

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## CHAPTER TEN: IRREGULAR MIGRATION, TRAFFICKING, AND THE HUMAN COSTS OF FAILED GOVERNANCE

### 10.1 The Scale and Dynamics of Irregular Migration from Bangladesh

Irregular migration, the movement of persons outside the legal channels established by the migration governance framework, is a significant and growing phenomenon in the context of Bangladeshi labour migration. Irregular migration occurs because the legal migration channels are insufficient, inaccessible, or too expensive relative to the demand for overseas employment, driving workers to use illegal channels that are more dangerous and that expose them to greater exploitation.

The two principal forms of irregular migration from Bangladesh are undocumented migration through unofficial land and sea routes, primarily toward India and from India to other destinations including Europe and the Middle East, and documented migration through fraud, in which workers enter destination countries on tourist or other non-work visas and then overstay and work illegally. Both forms of irregular migration are associated with higher vulnerability to

exploitation and trafficking, lower wages, more precarious employment conditions, and greater exposure to detention, deportation, and human rights violations.

The scale of irregular migration from Bangladesh is difficult to estimate precisely, because by definition irregular migration is not recorded in official statistics. Based on detention and deportation data from destination countries, and on estimates from research organizations, it is estimated that between 200,000 and 500,000 Bangladeshi workers are employed abroad in irregular status, though the actual figure may be higher. The Mediterranean migration route, which has attracted significant international attention since the large-scale movements of 2015-2016, includes significant numbers of Bangladeshi migrants, with Bangladeshis consistently featuring among the top ten nationalities attempting irregular entry into the European Union.

The deaths of Bangladeshi workers in irregular migration contexts constitute a profound human tragedy that is directly attributable to the failures of migration governance. Workers who drown in the Mediterranean, die in desert crossings in North Africa, are killed by traffickers or criminal gangs in transit, or die in horrific conditions in Libyan detention centers, were driven to these routes by the same structural factors, the absence of affordable regular migration channels, the high costs of legal migration, and the desperate search for economic opportunity, that drive all Bangladeshi migration. Their deaths represent a failure of the international migration system and a failure of Bangladesh's domestic migration governance to provide safe and affordable alternatives.

### 10.2 The Trafficking-Migration Nexus: Legal Frameworks and Governance Failures

The intersection of human trafficking and labour migration is particularly acute in the context of Bangladesh, where the structural conditions that drive labour migration, including poverty, information asymmetries, and the absence of alternative economic opportunities, also create the vulnerabilities that traffickers exploit. The distinction between trafficking and exploitative migration is sometimes difficult to draw in practice, because the recruitment methods used by traffickers and the methods used by fraudulent but technically legal recruitment agents can be very similar, both involving misrepresentation of the employment conditions, concealment of the true costs and nature of the work, and exploitation of workers' economic desperation.

The Palermo Protocol on Trafficking in Persons, which Bangladesh has ratified, defines trafficking to include the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force, other forms of coercion, deception, abuse of power, or abuse of a position of vulnerability, for the purpose of exploitation. The deceptive recruitment of migrant workers for exploitative employment abroad falls within this definition if the worker did not know and would not have consented to the actual conditions of employment, and the recruitment involved deception or abuse of vulnerability.

The application of anti-trafficking law to cases of exploitative labour migration has been inconsistent and inadequate. Law enforcement agencies and prosecutors have focused predominantly on trafficking for sexual exploitation, which is more visible and generates more political attention than labour trafficking, while cases of labour trafficking in the garment, construction, and domestic service sectors have been relatively rarely identified, investigated, or

prosecuted. The inadequacy of the legal response to labour trafficking is compounded by the reluctance of migrant workers to report trafficking to authorities, because of fears of deportation, lack of trust in law enforcement, and the social stigma associated with being identified as a trafficking victim.

The development of more effective legal and institutional responses to labour trafficking requires a fundamental reorientation of the anti-trafficking framework toward the structural conditions that enable trafficking, rather than focusing exclusively on the prosecution of individual traffickers after the fact. This requires addressing the root causes of trafficking vulnerability, including poverty, lack of education, inadequate access to formal migration channels, and the absence of social protection, through systemic reforms of the migration governance and social protection frameworks analyzed throughout this textbook.

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## CHAPTER ELEVEN: COMPARATIVE ANALYSIS AND LESSONS FOR BANGLADESH

### 11.1 The Philippines Model: State-Managed Labour Export and Its Contradictions

The Philippines is the country whose experience with labour migration governance has been most extensively studied and most frequently cited as a model for other labour-sending countries, including Bangladesh. The Philippines has developed one of the most comprehensive and institutionalized labour migration governance frameworks in the developing world, built around the Overseas Filipino Workers (OFW) program and its institutional infrastructure, including the Philippine Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), and an extensive network of diplomatic missions and labor attachés.

The Philippine model is characterized by several features that distinguish it from Bangladesh's approach. First, the Philippines treats its migrant workers explicitly as a national resource and a matter of state policy, devoting significant institutional resources to the promotion, regulation, and protection of overseas employment. Second, the Philippines has developed a relatively comprehensive pre-departure and in-country support system, including extensive pre-departure orientation, in-country welfare services, and return and reintegration programs. Third, the Philippines has used the threat of bilateral labor bans, suspending the deployment of workers to countries that fail to meet minimum standards for worker protection, as a diplomatic leverage mechanism with some effectiveness in improving standards in destination countries.

However, the Philippines model has also attracted significant critical analysis. The framing of labor migration as a positive policy choice and a national development strategy, encapsulated in the description of OFWs as Bagong Bayani (New Heroes), has been criticized by scholars and activists who argue that it obscures the structural economic conditions that make migration a necessity rather than a choice, and that it displaces the responsibility of the Philippine state to create decent work at home by celebrating the migration that reflects the failure of domestic development policy.

The application of the Philippines model to Bangladesh requires careful contextual analysis. Bangladesh's migration governance institutional framework is significantly less developed than the Philippines, and the development of comparable institutions requires sustained investment over many years. The bilateral leverage that the Philippines has exercised through the threat of labor bans is available to Bangladesh in principle, but its effectiveness depends on Bangladesh's credibility in following through on such threats, which has been limited by the economic dependence on remittances that makes the government reluctant to restrict migration even when worker conditions are unacceptable.

### 11.2 The Sri Lankan Model: Vulnerability and Resilience

Sri Lanka's experience with female labour migration, particularly of domestic workers to the Gulf states, provides a particularly relevant comparative case for Bangladesh given the similarities in destination country, sector, and the particular vulnerabilities of female domestic workers. Sri Lanka has experienced several major crises involving the abuse of Sri Lankan domestic workers in the Gulf, including high-profile cases of abuse and execution, and has responded through a combination of regulatory reform, diplomatic action, and worker support programs.

Sri Lanka's response to the crisis of female domestic workers in the Gulf has been more systematic than Bangladesh's, reflecting the longer history of Sri Lankan labour migration and the stronger institutional capacity of Sri Lanka's migration governance framework. The introduction of minimum wage standards for Sri Lankan domestic workers in Gulf states through bilateral negotiations, the development of standard employment contracts with minimum terms, the establishment of welfare centers in major destination countries, and the introduction of a mandatory savings scheme for migrant workers are among the innovations of the Sri Lankan system that have potential relevance for Bangladesh.

The Sri Lankan experience also illustrates the limitations of sending-country efforts to protect workers in destination countries where the fundamental legal framework is hostile to workers' rights. Even the most well-developed bilateral protection framework cannot fully address the structural vulnerabilities arising from the kafala system and the exclusion of domestic workers from labour law, and the Sri Lankan government has itself periodically suspended and resumed deployment to specific countries in response to egregious abuse cases, with limited long-term effectiveness.

### 11.3 Nepal: Rights-Based Approaches and Collective Action

Nepal, which is a smaller labour-sending country than Bangladesh with a similarly large proportion of its workforce abroad and a similarly heavy dependence on remittances, has made some notable innovations in the governance of labour migration that provide useful lessons for Bangladesh.

The Civil Society Network on Migrant Workers in Nepal, which brings together migrant rights organizations, trade unions, women's organizations, and returnee associations, has developed a model of civil society engagement in migration governance that has been more effective in

influencing policy than the more fragmented advocacy environment in Bangladesh. The Nepali government has also been more willing than Bangladesh to use bilateral labor bans as leverage against destination countries that fail to meet minimum protection standards, including a ban on female domestic workers going to certain Gulf states, and this more assertive diplomacy has produced some improvements in the protection framework for Nepali workers.

The Nepali experience with the Free Visa, Free Ticket initiative, through which the government has negotiated with several major destination countries that Nepali workers should be recruited at no cost to themselves, with all recruitment costs paid by the employer, has been a notable innovation in the employer-pays principle implementation. While not uniformly successful, this initiative has demonstrated that sending-country governments can, through sustained diplomatic engagement, make progress on the recruitment cost problem even in the absence of a fundamental shift in the global migration governance framework.

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## CHAPTER TWELVE: REFORM PROPOSALS FOR BANGLADESH'S MIGRATION GOVERNANCE

### 12.1 Principles for a Rights-Based Migration Governance Framework

The reform of Bangladesh's labour migration governance must be grounded in a coherent and principled framework that takes seriously both the rights of migrant workers as human beings of equal worth and the practical constraints and opportunities of the specific political and economic context of Bangladesh's migration system. The following principles provide the normative foundation for the reform proposals developed in this Chapter.

The first principle is human dignity: all Bangladeshi workers who migrate abroad are persons of equal worth and dignity, entitled to the same respect for their basic rights as any other human being, regardless of their occupation, immigration status, or destination. The legal framework for migration governance must be designed with this principle as its fundamental premise, not as a secondary consideration subordinate to economic efficiency or diplomatic convenience.

The second principle is non-discrimination: Bangladeshi workers abroad must not be subject to discrimination on grounds of nationality, gender, race, religion, or any other protected characteristic in the terms and conditions of their employment or in their access to justice and social protection. The systematic discrimination against migrant workers relative to national workers in destination-country labour markets, including the exclusion of migrant workers from labour law protection, social security, and the right to organize, is incompatible with this principle and must be challenged through bilateral and multilateral mechanisms.

The third principle is informed choice: migration decisions must be made by workers who have access to accurate, complete, and understandable information about the nature of the employment they are accepting, the conditions of life in the destination country, their legal rights, and the risks they face. The systematic information asymmetries of the current migration system, which are exploited by recruitment agents and employers to extract excessive fees and to

expose workers to conditions they would not accept if fully informed, violate this principle and must be addressed through regulatory reform and public information initiatives.

The fourth principle is access to justice: migrant workers who suffer rights violations must have effective access to remedies, whether through the judicial system of the destination country, through consular protection, through bilateral dispute resolution mechanisms, or through international adjudicatory bodies. The current situation in which the vast majority of rights violations against Bangladeshi migrant workers go entirely unaddressed is incompatible with this principle and represents a catastrophic failure of the rule of law.

The fifth principle is social protection: migrant workers must not be left without social protection simply because they are employed outside Bangladesh. The social protection deficit in the migration corridor, through which workers are exposed to the full range of social risks without any institutional framework for risk-sharing or compensation, is both a human rights failure and an economic inefficiency that imposes enormous costs on workers and their families.

### 12.2 Immediate Reform Priorities

Drawing on the analysis of the preceding chapters, the following immediate reform priorities for Bangladesh's migration governance can be identified.

The first priority is the comprehensive revision of the Overseas Employment and Migrants Act, 2013 to address its documented deficiencies, including the inadequacy of the recruitment fee regulation, the weak enforcement provisions, the limited protections for women migrant workers, the absence of effective social protection provisions, and the inadequacy of the return and reintegration framework. The Labour Reform Commission's April 2025 report identified migration governance as a priority reform area, and its recommendations for legislative reform should be implemented through a comprehensive revision of the OEMA 2013.

The second priority is the strengthening of the BMET's regulatory capacity, including the development of an effective inspection and enforcement system for recruitment agency regulation, the introduction of digital monitoring systems for compliance with the recruitment fee regulations, the development of a blacklisting system for agencies that repeatedly violate the Act, and the strengthening of coordination between BMET, the police, and the Anti-Corruption Commission for the prosecution of recruitment fraud.

The third priority is the negotiation of improved bilateral labor agreements with the principal destination countries, with particular focus on the following key standards: compliance with the employer-pays principle, including zero-cost recruitment for workers in specified sectors; extension of labor law protection and minimum wage coverage to all Bangladeshi workers including domestic workers; access to effective dispute resolution mechanisms for workers in destination countries; and the development of social protection mechanisms including occupational injury compensation, portable pension credits, and unemployment insurance for returning workers.

The fourth priority is the development of a comprehensive social protection framework for migrant workers and their families, building on the foundations of the EIS pilot and the Universal Pension Scheme, to ensure that workers who are injured, become ill, or are forced to return without having completed their contracts are entitled to adequate compensation and support. The STREAM program's work on extending social protection in the South Asia-Gulf corridor provides a practical framework for this development.

The fifth priority is the development of a comprehensive information and awareness program for migrant workers and potential migrants, providing accurate and accessible information about legal migration channels, rights and entitlements, recruitment fee regulations, standard employment contract terms, and the support services available in case of difficulty. This program should use all available channels including mobile phone networks, community radio, local government information services, and civil society organizations.

### 12.3 The Medium-Term Reform Agenda: Structural Transformation

The medium-term reform of Bangladesh's migration governance requires addressing the structural factors, both domestic and international, that create the conditions for exploitation. At the domestic level, this requires sustained development of the domestic economy to provide more and better employment opportunities in Bangladesh, reducing the desperation that drives workers to accept exploitative conditions abroad. This connects to the broader development policy agenda of the current government, including the diversification of the export base, the development of the IT and services sectors, the improvement of educational quality and skills development, and the development of the social protection system analyzed in Part Fifteen.

At the international level, medium-term reform requires building the diplomatic and institutional framework for a fundamentally different relationship between Bangladesh and the Gulf states and other major destination countries, in which migrant workers are treated as full rights-bearing persons rather than as temporary commodities. The abolition of the kafala system in Saudi Arabia in 2025, while imperfect in its implementation, represents a potentially significant shift in the structural conditions of Bangladeshi workers in the largest destination country. Building on this development to advocate for similar reforms in other Gulf states, and to ensure that the Saudi abolition is genuinely implemented in a way that benefits Bangladeshi workers, is a major diplomatic priority.

The development of Bangladesh's skills infrastructure, including the expansion of Technical and Vocational Education and Training (TVET), the development of internationally recognized qualifications frameworks, and the strengthening of skills recognition agreements with major destination countries, is a medium-term priority that can significantly improve the wages and working conditions of Bangladeshi workers abroad by increasing their productivity and employability in higher-skilled occupations.

The development of diaspora engagement policies that harness the knowledge, skills, networks, and capital of Bangladeshi diaspora communities in the UK, USA, Australia, and elsewhere for development purposes is a further medium-term priority. The Bangladeshi diaspora is a

significant economic and intellectual resource that has been relatively underutilized in Bangladesh's development strategy.

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## CHAPTER THIRTEEN: JURISPRUDENTIAL AND PHILOSOPHICAL SYNTHESIS

### 13.1 The Migrant Worker and the Rule of Law

The analysis developed throughout this Part reveals a profound and systemic failure of the rule of law in relation to Bangladeshi migrant workers. The rule of law, understood in its most fundamental sense as the requirement that all persons are subject to and protected by the law, and that legal rights are not merely formal but are practically effective, is systematically violated in the case of migrant workers both in Bangladesh and in the destination countries.

In Bangladesh, the legal framework for migration governance contains numerous formal protections for workers, including prohibitions on excessive recruitment fees, requirements for employment contracts, and criminal penalties for recruitment fraud. These formal protections are, in the main, not practically effective, because the enforcement apparatus is inadequate, the legal procedures for asserting rights are inaccessible to most workers, and the political economy of migration governance prioritizes the continuation of migration flows over the robust enforcement of workers' rights. The gap between law on the books and law in action is, in the field of migration governance, even larger than it is in the field of domestic labour law, and this gap represents a fundamental failure of the rule of law.

In destination countries, the rule of law failure is even more stark. Migrant workers who are subjected to wage theft, physical abuse, confinement, and other serious rights violations have in practice extremely limited access to legal remedies. The legal system of the destination country is, in most cases, practically inaccessible to migrant workers who do not speak the language, who lack legal representation, who fear deportation, and who have no resources to sustain prolonged litigation. The workers most in need of legal protection are the ones for whom the law is most practically inaccessible.

The jurisprudential analysis of this rule of law failure connects to the concept of legal pluralism, the simultaneous existence of multiple legal orders governing the same situation, that has been developed by scholars such as Gunther Teubner, Sally Falk Moore, and Brian Tamanaha. The migrant worker is governed by multiple legal orders, the Bangladeshi law of migration, the destination-country law of employment and residence, the international human rights framework, bilateral agreements, and various forms of private governance including the standards of international brands and the codes of conduct of the migration industry. These multiple legal orders interact in complex ways, creating possibilities for forum shopping by powerful actors and enforcement gaps that leave workers systematically unprotected.

The development of effective legal protection for migrant workers requires not simply the reform of individual legal instruments but the development of a coherent framework for the interaction

of the multiple legal orders that govern their situation, ensuring that the protections they offer are not evaded through the jurisdictional complexity of transnational employment.

## 13.2 Human Rights Theory and the Obligations of Receiving States

The philosophical analysis of migration governance raises fundamental questions about the extent and nature of the obligations of destination states toward migrant workers. The standard account of international human rights law holds that states have obligations toward all persons within their territory and subject to their jurisdiction, regardless of nationality. On this account, GCC states bear full human rights obligations toward the millions of migrant workers on their territory, including the obligation to ensure equal access to labour law protection, freedom from forced labour, and adequate social protection.

However, the implementation of these obligations has been systematically resisted by destination states, which invoke national sovereignty and immigration control powers as justifications for differential treatment of migrant workers. The theoretical analysis of the relationship between national sovereignty and human rights obligations in the context of migration is one of the most contested areas of international legal theory.

The cosmopolitan approach, associated with philosophers such as Joseph Carens, Thomas Pogge, and David Held, argues that the principle of national sovereignty cannot justify violations of fundamental human rights, and that destination states have legally binding obligations to ensure equal treatment of migrant workers that override their domestic immigration policy preferences. On this account, the kafala system, the exclusion of domestic workers from labour law, and the systematic denial of social security to migrant workers are all violations of international legal obligations that destination states are required to remedy.

The statist approach, associated with scholars such as David Miller and Michael Walzer, argues that states have the right to make distinctions between citizens and non-citizens in the allocation of social and economic benefits, and that the obligations of states toward migrant workers are less extensive than their obligations toward citizens. On this account, destination states may legitimately maintain systems like the kafala that treat migrant workers differently from citizens, provided they meet minimum standards of decent treatment.

The practical resolution of this theoretical debate in Bangladesh's specific context requires a pragmatic approach that pursues maximum feasible improvement in the protection of migrant workers' rights through the available legal and diplomatic mechanisms, while recognizing the structural constraints on the international legal enforcement of human rights in countries that are not parties to the relevant conventions and that have strong political incentives to maintain the existing system. The development of new bilateral and multilateral frameworks, aligned with international human rights standards, is the most promising avenue for progressive improvement, and it requires sustained diplomatic engagement backed by the credible possibility of labor supply restrictions in cases of serious and persistent violations.

## 13.3 The Postcolonial Lens: Migration, Power, and Development Justice

The postcolonial analysis of Bangladeshi labour migration reveals structural continuities with the colonial labour extraction analyzed in Part One of this textbook. The movement of South Asian workers to the Gulf states under the kafala system replicates in significant respects the movement of South Asian indentured workers to colonial plantations in the nineteenth century: both systems involve recruitment through exploitative intermediaries, financing through debt, the tying of workers' legal status to a single employer, the isolation of workers in enclosed spaces remote from their communities, and the systematic absence of effective legal protection.

The theoretical framework of what scholars such as Walter Mignolo and Aníbal Quijano call the coloniality of power, the persistence of colonial power relations in post-independence societies and global economic structures, is directly applicable to the analysis of Bangladesh's migration system. The global economic hierarchy that positions Bangladesh as a labour-exporting country and the Gulf states as labour-importing countries is not a natural fact but a product of the colonial history that created the unequal distribution of capital, technology, and economic power that persists in the twenty-first century.

The development justice dimension of this analysis implies that the reform of Bangladesh's migration governance cannot be divorced from the broader agenda of global economic justice. The global trade and investment rules that constrain Bangladesh's economic development, the intellectual property regimes that prevent technology transfer, the climate change that disproportionately affects Bangladesh's agricultural economy, and the patterns of global capital flows that extract resources from poor countries rather than building productive capacity within them: all of these contribute to the conditions of poverty and economic desperation that drive Bangladeshi workers to accept exploitative conditions abroad.

This does not mean that domestic migration governance reform is unimportant or should await the transformation of the global economic order. It means that migration governance reform must be understood as part of a broader political project of development justice that addresses the structural conditions of Bangladesh's vulnerability in the global economy, not merely as a technocratic adjustment to the governance framework of a given sector.

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## CHAPTER FOURTEEN: THE JULY 2024 REVOLUTION, THE LABOUR REFORM COMMISSION, AND THE PROSPECTS FOR TRANSFORMATIVE CHANGE

### 14.1 The Political Context: From Revolution to Reform

The July 2024 revolution that brought the interim government of Muhammad Yunus to power, analyzed in the context of domestic labour law in Parts One and Fifteen, also created significant opportunities for reform of Bangladesh's migration governance. The student-led uprising that overthrew the Hasina government was driven, in significant part, by the economic frustrations and governance failures that had accumulated under fifteen years of Awami League rule, and these frustrations included the systematic failure to protect the rights of Bangladeshi workers abroad and the corruption and inefficiency of the migration governance system.

The Labour Reform Commission established in November 2024 was given a broad mandate that explicitly included the improvement of migrant workers' governance, and its April 2025 report contains detailed recommendations on migration governance reform. These recommendations include the comprehensive revision of the OEMA 2013, the strengthening of BMET's regulatory capacity, the development of improved bilateral labor agreements, and the establishment of a dedicated migrant worker social protection fund. The implementation of these recommendations will require sustained political will, administrative capacity, and financial resources that the interim government is working to mobilize.

The political context of the post-revolution period also includes a significantly altered relationship between Bangladesh and its international partners. The international community's support for the transition government, including the EU, the United States, and major international organizations, has created political space for the more assertive promotion of Bangladeshi workers' rights in destination countries and for the development of more ambitious social protection commitments.

The ILO's continuing technical assistance and normative engagement with Bangladesh, including the ongoing implementation of the ILO Roadmap for labour reform and the expansion of the EIS pilot, provides an important institutional foundation for the reform agenda. The ILO's November 2025 program on social protection for migrant workers in the South Asia-Gulf corridor, the STREAM program, is directly relevant to the implementation of the reform recommendations and represents a significant international commitment to supporting Bangladesh's social protection agenda.

### 14.2 The Role of Trade Unions and Civil Society in Migration Governance Reform

The reform of migration governance in Bangladesh cannot be achieved through government action alone; it requires the active engagement of trade unions, civil society organizations, migrant worker advocacy groups, women's organizations, and diaspora communities in the design, implementation, and monitoring of the reform agenda.

Trade unions in Bangladesh have historically been largely focused on the domestic labour market and have given insufficient attention to the situation of Bangladeshi workers abroad. The extension of trade union organizing and advocacy to migrant workers, including the development of migrant worker associations and the integration of migration governance into the collective bargaining agenda, is a significant institutional challenge for the Bangladeshi labour movement. Some trade unions have begun to develop programs for migrant workers, including pre-departure training, support for workers in distress, and advocacy for improved bilateral agreements, but these initiatives remain fragmented and under-resourced.

Civil society organizations, including RMMRU, BRAC, OKUP, Karmojibi Nari, and numerous other NGOs and advocacy groups, have been more active than trade unions in advocating for migrants' rights and providing direct support to migrant workers and their families. These organizations have played a crucial role in documenting the conditions of migrant workers, providing legal assistance and counseling, lobbying for legislative reform, and engaging with

international advocacy networks. Their continued and strengthened engagement is essential to the reform agenda.

The development of a National Migration Resource Center, as a shared knowledge and advocacy platform for government, trade unions, civil society, and diaspora organizations, could help to coordinate and strengthen the diverse actors in the migration governance reform field, and to develop the evidence base, the policy analysis, and the public communication that effective reform requires.

### 14.3 The International Accountability Framework: EU, ILO, and Supply Chain Due Diligence

The international accountability framework for Bangladesh's migration governance, including the ILO's supervisory mechanisms, the UN human rights treaty bodies, and the EU's trade preference framework, provides both normative guidance and political pressure for reform. The EU's Generalised Scheme of Preferences Plus (GSP+), which grants Bangladesh preferential trade access in exchange for the implementation of 27 international conventions including the core ILO standards, is the most significant single trade policy instrument for promoting labour rights reform in Bangladesh.

The EU's application of the GSP+ framework to migration governance, however, has been limited. The core ILO conventions covered by GSP+ focus primarily on freedom of association, collective bargaining, child labour, forced labour, and non-discrimination, but they do not directly address the specific governance failures in the migration sector analyzed in this Part. The development of more explicit conditionality on migration governance within the EU trade preference framework, or through the EU-Bangladesh Comprehensive Partnership Agreement that has been under negotiation, could provide additional leverage for migration governance reform.

The emerging framework of corporate supply chain due diligence, as developed in the EU Supply Chain Due Diligence Directive (adopted in 2024 and entering into force progressively through 2026 and beyond), requires large European companies to identify, prevent, and address human rights and environmental risks in their supply chains. The application of this framework to the migration practices of companies that source from Bangladesh, requiring them to ensure that the workers in their supply chains have not been recruited through exploitative practices, paid excessive migration fees, or subjected to forced labour, is a potentially significant lever for migration governance reform.

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## CHAPTER FIFTEEN: PHILOSOPHICAL AND JURISPRUDENTIAL CONCLUSION: TOWARDS A JUST MIGRATION ORDER

### 15.1 The Moral Foundations of Migration Justice

The analysis developed throughout this Part ultimately converges on a fundamental moral claim: the global migration system as it currently operates in the Bangladesh-Gulf corridor, and more broadly in the relationship between labour-sending and labour-receiving countries across the Global South, is fundamentally unjust, and its injustice is not merely incidental to the system but is structural and systemic.

The injustice takes several forms. It is an injustice of recognition, in which Bangladeshi migrant workers are not recognized as full human beings with equal dignity and equal rights, but are treated as commodities to be used for economic purposes and discarded when no longer useful. It is an injustice of distribution, in which the economic value created by migrant workers' labor is systematically captured by employers, shareholders, and intermediaries, while the workers themselves receive wages that are far below the living wage standard and bear all the costs and risks of migration. It is an injustice of procedure, in which workers have no meaningful voice in the decisions that fundamentally shape their lives, from the terms of their employment contracts to the immigration policies of destination countries. And it is an injustice of recognition again, but at the global level: an injustice in which the historical processes of colonialism, imperialism, and contemporary economic extraction that created the poverty driving Bangladeshi migration are not acknowledged, and the responsibility of richer countries and economic actors for the conditions that drive labour migration is denied.

The philosophical response to these injustices requires, at the domestic level, the development of a legal framework for migration governance that takes seriously the equal worth and dignity of every Bangladeshi worker, that provides effective protection of their rights both at home and abroad, that ensures they have access to justice when their rights are violated, and that provides the social protection they need to bear the risks of migration without being exposed to destitution. The reforms analyzed in Chapter Twelve of this Part, from the revision of the OEMA 2013 to the development of a comprehensive social protection framework for migrant workers, are the legal expressions of this moral commitment.

At the international level, the philosophical response requires Bangladesh to engage more assertively in the development of international norms and institutions that challenge the structural power imbalances of the migration system, including the kafala system, the exclusion of domestic workers from labour law protection, and the failure of major destination countries to accept their human rights obligations toward migrant workers. The diplomatic, legal, and civil society tools available for this engagement are significant, and their deployment requires the political will and the institutional capacity that the post-revolution period creates an opportunity to develop.

## 15.2 The Rights of Migrant Workers as Human Rights: A Concluding Analysis

The closing argument of this Part, and of this textbook, is that the rights of Bangladeshi migrant workers are not special pleading, not a matter of development charity, and not a privilege to be conditionally extended by destination-country governments as a concession to diplomatic pressure. They are human rights, grounded in the equal worth and dignity of every human being, recognized in the international human rights law that both Bangladesh and the destination

countries have formally accepted, and enforceable through the legal and institutional mechanisms of the international human rights system.

The realization of these rights requires the combination of domestic institutional reform, bilateral diplomatic engagement, multilateral norm development, civil society advocacy, and the political mobilization of workers and their supporters that has been the theme of this textbook throughout. It requires, above all, the recognition that the working people of Bangladesh, whether they labour in the garment factories of Dhaka, the brick kilns of Rajshahi, the construction sites of Dubai, or the private homes of Kuwait, are full human beings, full citizens of the global moral community, and full holders of the rights that human dignity demands.

The sixteen parts of this textbook have attempted to provide a comprehensive critical analysis of the legal framework that governs the working lives of these people, its philosophical foundations, its historical genesis, its structural inadequacies, and the reform agenda that justice requires. The field of labour law in Bangladesh is one of urgent practical consequence and profound philosophical interest, and it demands the sustained engagement of lawyers, scholars, advocates, policymakers, and workers themselves in the difficult work of building a legal order that is worthy of the humanity of all those it governs.

The Labour Law of Bangladesh stands at a critical juncture. The July 2024 revolution created unprecedented political space for reform. The 2025 amendment to the Bangladesh Labour Act introduced significant improvements. The international accountability framework is more demanding and more engaged than at any previous point in the country's history. The Labour Reform Commission's April 2025 report provides a comprehensive and principled blueprint for the development of a rights-based labour governance system. The question is whether the political will, the administrative capacity, and the social mobilization necessary to realize these possibilities will be sustained and developed in the years ahead.

The answer to that question will determine not merely the quality of the legal framework but the quality of the lives of the tens of millions of working people whose daily existence is shaped by the adequacy or inadequacy of Bangladesh's labour law. It is, ultimately, a question of justice, and justice admits of no indefinite deferral.

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On migration and development justice, the postcolonial analysis is developed in Walter Mignolo, The Darker Side of Western Modernity: Global Futures, Decolonial Options (2011); Robbie Shilliam, The Black Pacific: Anti-Colonial Struggles and Oceanic Connections (2015); and the growing literature on decolonizing development economics, including Jason Hickel, Less Is More: How Degrowth Will Save the World (2020).

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*The Labour Law of Bangladesh: Commentaries and Necessary Reforms concludes with Part Sixteen, which has examined the law of labour migration and the protection of Bangladeshi migrant workers abroad. The sixteen Parts of this textbook together constitute a comprehensive critical analysis of Bangladesh's labour law framework, its philosophical and historical foundations, its structural inadequacies, and the reform agenda that justice and international legal obligation require.*

*The work is dedicated to the men and women of Bangladesh who work, at home and abroad, under conditions of extraordinary difficulty and extraordinary dignity, and whose lives and labor constitute the foundation of whatever prosperity Bangladesh has achieved and whatever justice its legal system aspires to provide.*

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**End of Part Sixteen**

**End of Volume**

*The Labour Law of Bangladesh: Commentaries and Necessary Reforms, by S M Nazmuz Sakib, is published in sixteen parts. Parts One through Sixteen cover the philosophical and historical foundations of Bangladeshi labour law, the Bangladesh Labour Act 2006 and its 2013 and 2025 amendments, trade union rights and collective bargaining, occupational safety and health, maternity protection and gender equality, child labour and forced labour, the Export Processing Zones, labour dispute resolution, workers' profit participation, social security and the welfare state, the National Social Security Strategy, the workplace welfare framework, comparative social security analysis, transformative social security reform, philosophical synthesis, and the law of labour migration and migrant worker protection. Readers are encouraged to engage critically with the arguments presented and to pursue further research through the bibliographical notes accompanying each Part. The law and policy analyzed in this work continue to evolve rapidly, and readers are advised to verify the current status of legislative and regulatory provisions before relying upon them for professional purposes.*

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**S M Nazmuz Sakib** is an interdisciplinary scholar, researcher and author bridging IT, business analyties, and applied research. He is a Fellow of the Scholars Academic and Scientific Society, a Member of IAENG, a lifetime member of BELTA, and a Bangladeshi Arena Grand Master (AGM) recognized by FIDE. His credentials include extensive certifications across AWS, Google/SAS analytics, UX, project management, digital marketing, and finance.
Sakib has published several peer-reviewed articles and book chapters with Springer Nature, CRC Press/Taylor & Francis, and IGI Global on various topics.

## The Labour Law of Bangladesh: Commentaries and Necessary Reforms

is a comprehensive, sixteen-part scholarly work that critically examines the legal framework governing over ninety million working people in one of the world's most labour-intensive economies.

The book traces the evolution of labour law from the colonial period through the Pakistan era to post-independence Bangladesh, with detailed analysis of the Bangladesh Labour Act 2006 and its landmark amendments of 2013, 2018, and particularly the transformative Ordinance of November 2025 (subsequently enacted *as the* 2026 Amendment Bill)

Book covers the full spectrum of labour regulation, the employment contract and conditions of service; minimum wages, the living wage, and the political economy of remuneration; working time, overtime, and the right to rest; trade union formation, collective bargaining, and the right to strike; occupational safety and health, iredine Rana Plaza disaster and the International Accord

It offers a comprehensive reform agenda to transform Bangladesh's labour law into a genuine framework of worker dignity, freedom, and democratic

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